

Amer Rasul: Summary, as Published in *CheckMark*

Amer Rasul, of Toronto, was found guilty of one charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest. While employed by a company in a position of trust as senior manager of planning and analysis, Mr. Rasul misappropriated from his employer gift certificates having a face value of approximately \$19,900, which he both used himself and gave to family and friends for the purchase of personal merchandise. Mr. Rasul was fined \$5,000, charged costs of \$5,000, and expelled from the Institute.

CHARGE(S) LAID re Amer Rasul

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

1. THAT the said Amer Rasul, in or about the period December 1, 2001 through December 31, 2002, while employed with Indigo Books & Music 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 in that he misappropriated Indigo gift certificates having a face value of approximately \$19,900.00, contrary to Rule 201.1 of the rules of professional conduct.

Dated at Toronto, Ontario this 30th day of July 2003.

G.W. MILLS, FCA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Amer Rasul

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

DECISION AND ORDER MADE NOVEMBER 20, 2003

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to the charge, the Discipline Committee finds Amer Rasul guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Rasul be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Rasul 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. Rasul be and he is hereby charged costs fixed at \$5,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Rasul be and he is hereby expelled from membership in the Institute.
5. THAT notice of this Decision and Order, disclosing Mr. Rasul'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 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 Globe and Mail*.
6. THAT Mr. Rasul 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 25TH DAY OF NOVEMBER, 2003
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Amer Rasul

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: A charge against **AMER RASUL, 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 NOVEMBER 20, 2003

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on November 20, 2003 to hear a charge brought by the professional conduct committee against Amer Rasul, a member of the Institute.
2. Mr. Rasul was present and was represented by his counsel, Mr. Donald Brown. Mr. Paul Farley represented the professional conduct committee.
3. The decision and the order of the discipline committee were made known at the hearing. The formal decision and order was dated and sent to the parties on November 25, 2003. These reasons, given in writing pursuant to Bylaw 574, set out the charge, the decision, and the order, as well as the reasons of the discipline committee.

DECISION ON THE CHARGE

4. At the commencement of the hearing, the notice of assignment hearing, notice of hearing and charge were marked as Exhibits 1, 2 and 3, respectively. The charge laid by the professional conduct committee dated July 30, 2003 reads as follows:

THAT the said Amer Rasul, in or about the period December 1, 2001 through December 31, 2002, while employed with Indigo Books & Music 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 in that he misappropriated Indigo gift certificates having a face value of approximately \$19,900.00, contrary to Rule 201.1 of the rules of professional conduct.

5. Mr. Rasul entered a plea of guilty to the charge. He confirmed that he understood that on the basis of his plea, and on that basis alone, he could be found guilty of the charge.
6. The case for the professional conduct committee was presented by way of an agreed statement of facts (Exhibit 4) and a document brief of relevant documents (Exhibit 5). The agreed statement of facts was signed by Mr. Rasul on his own behalf and by Mr. Farley on behalf of the professional conduct committee.
7. Once the agreed statement of facts and document brief had been filed, the parties withdrew from the Council Chamber and the panel reviewed and considered the evidence.

8. Between the spring of 2001 and January of 2003, Mr. Rasul was employed as the senior manager of planning and analysis for Indigo Books & Music Inc. He had access to online gift certificates which were kept in a locked cupboard in his office.

9. In December 2001 Mr. Rasul set up an online account for himself, to which he credited three Indigo online gift certificates each having a face value of \$100. He then used those credits to order books and other online products from Indigo. Over the ensuing year he deposited approximately \$10,800 worth of Indigo online gift certificates to his account, and purchased approximately \$9,679 worth of merchandise.

10. Mr. Rasul set up similar accounts for his two brothers, his father, his sister and two friends. He used approximately \$10,000 in gift certificates to pay for the merchandise they ordered. Mr. Rasul did not receive money from his family or friends for the gift certificates he credited to their accounts.

11. In all, Mr. Rasul misappropriated \$19,900 worth of gift certificates. Indigo had an online fraud detection software program that eventually discovered his scheme. When he was confronted in January 2003, he acknowledged what he had done, and arranged to resign from Indigo and make restitution. Mr. Rasul paid Indigo \$41,624 in February 2003, which represented repayment for the misappropriated gift certificates, as well as Indigo's investigation fees and outside counsel fees.

12. Mr. Rasul apologized to Indigo by sending an email to the CEO, Heather Reisman, with whom he indicated he had had a close working relationship.

13. When the panel had finished reading and considering the evidence, the parties returned to the Council Chamber.

14. Mr. Farley said that he had concluded the case for the professional conduct committee. Mr. Brown called no evidence on behalf of Mr. Rasul with respect to the issue of guilt or innocence on the charge.

15. Upon deliberation, the panel found Mr. Rasul guilty of the charge. The formal decision sent to Mr. Rasul on November 25, 2003, reads as follows:

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to the charge, the Discipline Committee finds Amer Rasul guilty of the charge.

ORDER AS TO SANCTION

16. Mr. Farley did not call evidence with respect to the issue of sanction. Mr. Brown called Mr. Rasul and two character witnesses, Mr. Peter Boilesen, CA, vice-president of planning and analysis at Indigo, and Mr. Carl Fine, vice-president of special projects. When the evidence had been heard, both parties made submissions with respect to sanction.

17. The professional conduct committee requested a sanctions order that included a reprimand, the member's expulsion, a fine of \$5,000, costs of \$10,000, and the usual forms of notice as well as publication in *The Globe and Mail*.

18. Mr. Farley set out what he submitted were the mitigating circumstances of this case. He noted that the member had pleaded guilty, had cooperated fully in the professional conduct committee investigation, and had made restitution to his former employer and paid the costs associated with the investigation of his illegal conduct.

19. Mr. Farley also pointed out the aggravating circumstances in the case, including the fact that the member abused his position of trust, stole a significant amount of money, carried out the scheme in 202 separate fraudulent transactions over a period of twelve months, continued his scheme until he was caught, and involved others in his misconduct.

20. Mr. Farley also emphasized that Mr. Rasul did not show any remorse. He pointed out that, in giving evidence, Mr. Rasul suggested that his misconduct started out as an effort to improve his knowledge for the benefit of his employer, whereas it was clear from the first improper orders he placed that this was not the case.

21. Mr. Farley submitted that of the three general principles which govern the imposition of sanction – rehabilitation, specific deterrence and general deterrence – the principle of overriding importance in this case was general deterrence. It was the prosecution's position that as a matter of general deterrence Mr. Rasul should be expelled so as to put other members of the Institute on notice that misconduct such as that displayed in this case will result in the severest of consequences, including full disclosure of their names.

22. Mr. Farley reviewed a number of past discipline cases, including *Galuzzo*, *Rinaldi*, *McLeod* and *Locke*. He submitted that the precedents confirmed the importance of general deterrence and the need for expulsion in cases like this one.

23. On behalf of the member, Mr. Brown took issue with the expulsion, the fine and the costs requested.

24. Mr. Brown reviewed a number of the cases which Mr. Farley had reviewed, pointing out that even when the misconduct involved moral turpitude there was discretion in the discipline committee not to expel the member. He asked the panel to consider a number of factors in the exercise of this discretion.

25. Mr. Brown submitted that Mr. Rasul had demonstrated rehabilitation. He specifically referred to the evidence of Messrs. Boilesen and Fine, who testified that they trusted Mr. Rasul and would have no hesitation in hiring him. Mr. Brown submitted that given the rehabilitation which Mr. Rasul had demonstrated, it would be to the benefit of Mr. Rasul, the profession and the public that he remain a member of the Institute and practise within the profession. Mr. Rasul would benefit from the need and opportunity to keep current in the profession's standards. The profession would benefit by keeping a competent and ethical member. The public would benefit because Mr. Rasul would be required to meet the technical and ethical standards of the Institute.

26. Mr. Brown submitted that general deterrence would be served through the publication of the decision and order disclosing his client's name.

27. He referred to the *Reiterowski* case, and challenged the rationale whereby misconduct involving moral turpitude such as Mr. Rasul's typically resulted in expulsion, whereas misconduct such as Mr. Reiterowski's, which was a standards case not involving moral turpitude, typically resulted in a suspension, when Mr. Reiterowski's misconduct caused more damage to the public and the reputation of the profession than Mr. Rasul's.

28. It was Mr. Brown's submission that Mr. Rasul had made a stupid mistake from which he had suffered financially, but had recognized the error of his ways and made restitution for his actions, and that accordingly this panel could and should exercise its discretion not to expel Mr. Rasul because of exceptional circumstances. In his view, the damage to the profession on account of Mr. Rasul's misconduct, as a result of which no member of the public suffered loss, was much less significant than in many standards-related cases.

29. With respect to the issue of the fine and costs, Mr. Brown submitted that it was not appropriate for the discipline committee to impose financial terms which would financially cripple Mr. Rasul. He submitted that given the money that Mr. Rasul had already paid, the facts and circumstances of this case did not warrant such monetary penalties.

30. Mr. Brown took particular issue with the appropriateness of the quantum of costs associated with the professional conduct committee's investigation, which amounted to more than \$10,000, though he conceded that full recovery of those costs was not being sought. He acknowledged that the professional conduct committee was seeking costs in total of \$10,000, approximately \$5,000 of which was on account of counsel fees and court reporter charges, and \$2,600 of which was for counsel trial preparation time. He submitted that if the panel decided to award costs, then \$7,500 should be the maximum amount ordered.

31. When the parties had made their submissions with respect to sanction, the panel deliberated and reached its decision, whereupon the hearing reconvened and the chair summarized the terms of the order on the record.

32. The formal order sent to the parties on November 25, 2003 reads as follows:

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Rasul be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Rasul 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. Rasul be and he is hereby charged costs fixed at \$5,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Rasul be and he is hereby expelled from membership in the Institute.
5. THAT notice of this Decision and Order, disclosing Mr. Rasul'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 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 Globe and Mail*.
6. THAT Mr. Rasul 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

31. The panel is of the view that a reprimand is necessary as a specific deterrent to Mr. Rasul. It is intended to stress to him the serious nature of his offence and the unacceptability of his conduct as a chartered accountant.

Fine

32. We concluded that as a matter of general deterrence a fine of \$5,000 was required, and bearing in mind Mr. Rasul's financial circumstances thought it was appropriate that he be given six months to pay the fine

Expulsion

33. We concluded that the principle of general deterrence is of overriding importance in this case. In our view, conduct such as Mr. Rasul's is simply unacceptable for a chartered accountant. The aggravating factors set out in paragraphs 19 and 20 above were all relevant to the imposition of sanction. We concluded that the principle of general deterrence required Mr. Rasul's expulsion.

34. This panel did not accept the submission that Mr. Rasul had demonstrated rehabilitation. We were not persuaded by the evidence of Mr. Boilesen and Mr. Fine, which stressed the characteristics Mr. Rasul demonstrated before his misconduct, i.e. that he was bright, capable, hard-working and articulate. We did not accept the fact that his securing of another job was evidence of rehabilitation, and we learned during the hearing that he had not made his new employer aware of his misconduct or the resulting disciplinary proceedings.

35. Some members of the panel did not think that Mr. Rasul had demonstrated that he had begun to rehabilitate himself. They did not think that he had shown remorse, and they did not think that his claim that his initial motive for misconduct had been to benefit the company by improving his knowledge had been borne out by the evidence.

36. Other members of the panel did believe that he had begun to rehabilitate himself. In their view, if he continued to rehabilitate himself he would make a reasonable candidate for readmission to the Institute at some point in the future, when he could demonstrate that he had been rehabilitated.

37. The panel understood Mr. Brown's point that standards related cases do not typically result in expulsion even when members of the public suffer loss as a result and the reputation of the profession is damaged. It may be that there are standards cases which should be the subject of a charge or charges under Rule 201.1, as demonstrating conduct that fails to uphold the good reputation of the profession and its ability to serve the public interest. But that does not help Mr. Rasul who is charged under Rule 201.1, nor does it help this panel in dealing with Mr. Rasul's misconduct. When we compared Mr. Rasul and his misconduct to past disciplined members engaged in similar misconduct there was no basis for finding that this was an exceptional case in which expulsion was not required.

Notice

38. Mr. Brown did not suggest that this was one of the rare and unusual types of cases in which publication of the decision and order, including disclosure of the member's name, was not appropriate. In fact, one of his submissions was that the issue of general deterrence was addressed through publication. We agree. All members of the profession should be aware that if they engage in conduct similar to Mr. Rasul's, they should expect to be expelled and to have notice of their expulsion published in *CheckMark* and in a newspaper or newspapers distributed in the area in which they work or reside.

39. We think it is important for the public to know that the chartered accountancy profession governs itself and takes matters of professional conduct seriously. It is also important that the discipline process be known as an open process, and publishing notice of disciplinary decisions and orders helps to make this known.

Costs

40. We had serious concerns about the costs of the professional conduct committee's investigation. This was a case involving only one charge, and the independent forensic accountant's report, which was obtained by Indigo and paid for ultimately by Mr. Rasul, was made available to the professional conduct committee. At no time did Mr. Rasul deny his misconduct.

41. We recognize that the prosecution did not seek to recover the full costs of its investigation. But it was not apparent to the panel why the professional conduct committee needed a further investigation at all, given the forensic investigation that had already been completed and the fact that Mr. Rasul acknowledged his misconduct throughout.

42. We concluded that costs in the amount of \$5,000 payable within six months was appropriate in this case. This amount reflects prosecution counsel preparation time, two half day counsel fees for the hearing itself for counsel to the professional conduct and discipline committees at the partial indemnity rate set out in the costs tariff to the rules of civil procedure, and the amount requested for the court reporter. We rounded this amount down in light of Mr. Rasul's financial circumstances, the costs he paid for Indigo's forensic accountant, the full restitution he made to Indigo, and the fact that he was unemployed for several months.

Certificate

43. Mr. Rasul was ordered to surrender the certificate of his Institute membership, which belongs to the Institute.

DATED AT TORONTO THIS 8TH DAY OF JANUARY, 2004
BY ORDER OF THE DISCIPLINE COMMITTEE

B.A. TANNENBAUM, FCA – DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

M.S. LEIDERMAN, CA
S.W. SALTER, CA
H.G. TARADAY, CA
D.J. ANDERSON (Public representative)