

## **Barry Michael Garside: Summary, as Published in *CheckMark***

**Barry Michael Garside**, of Oakville, was found guilty of four charges under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest, and one charge under Rule 203.2 of failing to cooperate in a professional conduct committee investigation. While in a position of trust, Mr. Garside misappropriated for his own use approximately \$180,000 from a group of companies by which he was employed, and failed to cooperate in the professional conduct committee investigation into the misappropriations. He was fined \$25,000 and expelled from the Institute. The appeal committee upheld the fine and the expulsion.

## **CHARGE(S) LAID re Barry Michael Garside**

The Professional Conduct Committee hereby makes the following charges against Barry M. Garside, CA, a member of the Institute:

1. THAT, the said Barry M. Garside, CA, in or about the period February 1, 1995 through February 28, 1997, 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 funds in the approximate amount of \$100,000, the property of Marine Intercontinental Stevedoring of Canada Ltd., contrary to Rule 201.1 of the rules of professional conduct.
2. THAT, the said Barry M. Garside, CA, in or about the period May 1, 1996 through February 28, 1997, 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 funds in the approximate amount of \$60,000, the property of Hamilton Harbour Overseas Terminus Inc., contrary to Rule 201.1 of the rules of professional conduct.
3. THAT, the said Barry M. Garside, CA, in or about the period May 1, 1995 through December 31, 1996, 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 funds in the approximate amount of \$15,000, the property of Methan Agencies Inc., contrary to Rule 201.1 of the rules of professional conduct.
4. THAT, the said Barry M. Garside, CA, in or about the period July 1, 1994 through April 30, 1995, 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 funds in the approximate amount of \$4,000, the property of Hamilton Harbour Terminals Inc., contrary to Rule 201.1 of the rules of professional conduct.
5. THAT, the said Barry M. Garside, CA, in or about the period June 23, 1997 through January 13, 1998, 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 of the rules of professional conduct.

Dated at Toronto this 26th day of January 1998.

DOUGLAS BOUFFORD, CA - DEPUTY CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

## **DISCIPLINE COMMITTEE re Barry Michael Garside**

**DECISION AND ORDER IN THE MATTER OF:** Charges against **BARRY MICHAEL GARSIDE, CA**, a member of the Institute, under **Rules 201.1 and 203.2**, of the Rules of Professional Conduct, as amended.

### **DECISION AND ORDER MADE JULY 28, 1998**

#### **DECISION**

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Barry Michael Garside guilty of charges Nos. 1, 2, 3, 4 and 5.

#### **ORDER**

IT IS ORDERED in respect of the charges:

1. THAT Mr. Garside be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Garside be and he is hereby fined the sum of \$25,000, 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. Garside be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Garside'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; and
  - (c) by publication in *CheckMark*; and
  - (d) by publication in *The Hamilton Spectator* and *The Globe and Mail*.
5. THAT Mr. Garside 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 30TH DAY OF JULY, 1998  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

## **DISCIPLINE COMMITTEE re Barry Michael Garside**

**RESONS FOR DECISION AND ORDER IN THE MATTER OF:** Charges against **BARRY MICHAEL GARSIDE, CA**, a member of the Institute, under **Rules 201.1 and 203.2**, of the Rules of Professional Conduct, as amended.

### **REASONS FOR THE DECISION AND ORDER MADE JULY 28, 1998**

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on June 17, 18 and 19, and July 7, 23, 27 and 28, 1998, to hear evidence concerning charges brought by the professional conduct committee against Mr. Barry Michael Garside.

The professional conduct committee was represented by Mr. Paul Farley. Mr. Garside was present and represented by his counsel, Mr. James Cimba.

### **REQUEST FOR ADJOURNMENT**

At the commencement of the proceedings, Mr. Cimba requested that the hearing be adjourned. He submitted that as Mr. Garside's career was at stake, it was essential that the proceeding be fair to Mr. Garside and that the discipline committee have all the relevant evidence before making a decision. He made it clear that the defence was that Mr. Georg Sparringa, for whom Mr. Garside worked, had made an arrangement with Mr. Garside which permitted the member to do what he had done, but that evidence which helped to establish this arrangement - documents from the Canadian Imperial Bank of Commerce - had not been produced, and subpoenas had just recently been obtained. Other documents, he indicated, were in the possession of the police. Mr. Cimba submitted that, essentially, these documents showed that his client had been treated like other 'members of the family', and that without the documents he would not be able to effectively cross-examine the witnesses for the professional conduct committee.

In addition, Mr. Cimba stated that he had just received production of documents from the professional conduct committee on the Monday before the hearing commenced.

The request for an adjournment was opposed by Mr. Farley on behalf of the professional conduct committee. He acknowledged that the charges put Mr. Garside's career in jeopardy, but said that there had been ample time for the defence to prepare its case and subpoena whatever witnesses and documents were required. He pointed out that disclosure of the documents and will-say statements had been made on February 19, and that the date for the hearing had been set by agreement at an assignment hearing on February 26. The disclosure included the documents set out in the document brief and the report of Mr. Cashion.

Mr. Farley stated that, while a new document had been given to Mr. Cimba on the Monday before the hearing commenced, it did not contain any new information, but rather summarized the existing information in the form of a chart or graph.

Mr. Farley submitted that the defence was entitled to and had received ample time to prepare its case, and should have done what the prosecution had done, which was to subpoena witnesses in a timely way and be ready to proceed on the hearing dates established. Moreover, he submitted, the document brief set out all of the relevant documents of the companies, including copies of cheques which were numbered, so that, in addition to providing full disclosure of the prosecution's case, the document brief also set out all of the documents which could be relevant to establish a defence.

Finally, Mr. Farley submitted that an adjournment would substantially prejudice the process itself, as well as the prosecution which had subpoenaed its witnesses. The date for the hearing had been set four months before, and it was apparent that the only reason the defence was not ready was that it had not taken the appropriate steps in a timely way.

After hearing the submissions of both parties, the panel deliberated on the motion to adjourn the hearing, and concluded that the hearing should proceed. The reasons for that decision were:

- disclosure of the case against Mr. Garside had been made in sufficient time for the defence to be prepared;
- there had been ample time available to Mr. Cimba to subpoena witnesses and gather the necessary bank documents; and
- it was unclear how the apparently missing documents would be prejudicial to Mr. Garside's case, particularly as the hearing was scheduled to proceed over several days, giving Mr. Cimba an opportunity to obtain and present documents.

## **DECISION ON THE CHARGES**

Five charges had been laid against Mr. Garside. Four of the charges related to Rule of Professional Conduct 201.1, alleging that Mr. Garside had failed to conduct himself in a manner that would maintain the good reputation of the profession and its ability to serve the public interest, in that he had misappropriated funds from various companies [the Sparringa companies] at which he was employed. The fifth charge related to Mr. Garside's failure to cooperate with the professional conduct committee investigation of the other alleged offences, contrary to Rule of Professional Conduct 203.2.

The charges read as follows:

1. THAT, the said Barry M. Garside, CA, in or about the period February 1, 1995 through February 28, 1997, 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 funds in the approximate amount of \$100,000, the property of Marine Intercontinental Stevedoring of Canada Ltd., contrary to Rule 201.1 of the rules of professional conduct.

2. THAT, the said Barry M. Garside, CA, in or about the period May 1, 1996 through February 28, 1997, 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 funds in the approximate amount of \$60,000, the property of Hamilton Harbour Overseas Terminus Inc., contrary to Rule 201.1 of the rules of professional conduct.
3. THAT, the said Barry M. Garside, CA, in or about the period May 1, 1995 through December 31, 1996, 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 funds in the approximate amount of \$15,000, the property of MethanAgencies Inc., contrary to Rule 201.1 of the rules of professional conduct.
4. THAT, the said Barry M. Garside, CA, in or about the period July 1, 1994 through April 30, 1995, 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 funds in the approximate amount of \$4,000, the property of Hamilton Harbour Terminals Inc., contrary to Rule 201.1 of the rules of professional conduct.
5. THAT, the said Barry M. Garside, CA, in or about the period June 23, 1997 through January 13, 1998, 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 of the rules of professional conduct.

Mr. Garside pleaded not guilty to all the charges.

### **Acknowledged Conduct**

It is not necessary to set out in detail the actions of Mr. Garside which led to the charges, as those actions are not contested. The defence was that Mr. Garside did not misappropriate funds but took them pursuant to an agreement made with Mr. Sparringa.

During the period June 1, 1995 to January 31, 1997, in addition to his authorized pay and bonus (\$127,000), Mr. Garside received cash (\$180,000) from, and the benefits of payments made on his behalf by, the Sparringa companies, including the payment of credit card accounts for him and his wife, which provided him with the equivalent of a pre-tax income of approximately \$490,000. Exhibit No. 5 summarizes this, and the particular documents, including cheques and cheque stubs, are found in Exhibit Nos. 3 and 4. Mr. Garside also received loans of \$95,000, which did not bear interest and were not due until demanded.

## **The Evidence**

Much of the evidence was directed to the issue of whether or not Mr. Sparringa, the major if not only shareholder of Marine Intercontinental Stevedoring of Canada Ltd., Hamilton Harbour Overseas Terminus Inc., Methan Agencies Inc., and Hamilton Harbour Terminals Inc. (the Sparringa companies), authorized Mr. Garside to have the companies pay personal expenses on his (Mr. Garside's) behalf, and to pay himself the other money and benefits that he received. The issue was not whether payments were made, but rather whether there was an agreement between Mr. Garside and Mr. Sparringa which permitted Mr. Garside to do what he did.

Counsel for the professional conduct committee submitted a document brief containing three volumes, and called a number of witnesses, including Mr. Sparringa. In summary, the document brief and the testimony of the witnesses provided the panel with many examples of alleged misuse of corporate funds by Mr. Garside for his personal benefit without the proper authorization or knowledge of the corporate owner. The evidence showed that Mr. Garside had control over the approval and payment of invoices, as well as the preparation of payroll cheques.

Mr. Sparringa testified that Mr. Garside was not authorized to spend corporate funds in the manner he did, and further testified that his own children were not given such authorization. Mr. Sparringa testified that he had only authorized business expenditures. Mr. Cimba and Mr. Garside countered this evidence with evidence to suggest that Mr. Garside operated within the authority that had been granted to him by Mr. Sparringa. Mr. Garside testified that the expenditures in question were common expenditures that all family members had received. It was Mr. Garside's testimony that Mr. Sparringa had full knowledge of the expenses and approved them.

Mr. Garside testified that the genesis of his arrangement with Mr. Sparringa was the latter's decision that Mr. Garside was to be his successor, and had offered him employment, beginning in June 1993, on the understanding that he would become a substantial shareholder of the companies. As Mr. Garside was to provide a succession to Mr. Sparringa, he was to be treated as an equal in the meantime. Mr. Garside said that he had always been authorized to pay himself additional monies, and to pay personal expenses through the companies, but that, when he did not receive the shares to which he had been promised, and when no shareholder agreements were forthcoming, Mr. Sparringa told him that the payments made to him, and the credit card expenses paid for him, were by way of an 'equalization payment'. This, Mr. Garside indicated, accounted for the increase in such payments in June 1995 and thereafter.

Mr. Garside cited the housing loan from Mr. Sparringa as confirmation that he was treated like family, and, as such, was entitled to expense corporate funds as other family members did.

With respect to charge No. 5, failure to cooperate in the professional conduct committee investigation, Mr. Farley submitted evidence in the form of letters to Mr. Garside and his lawyer, requesting certain documents that were relevant to the investigation. Mr. Garside testified that he did not cooperate in the investigation on the advice of his legal counsel.

## **Motion for Mistrial**

During the course of the hearing, Mr. Cimba made a motion to terminate the proceedings, on the ground that the panel had viewed a document that included an offer by Mr. Garside to the Sparringa companies to settle the civil action brought against him. Mr. Cimba submitted that the settlement offer was prejudicial to Mr. Garside, and would taint the objectivity of the panel.

The panel heard submissions on the motion for mistrial, and received advice from its counsel on the points of law at issue. Following the panel's deliberations on the matter, the chair gave the ruling, which was:

- that the settlement offer was admissible evidence;
- that the settlement offer did not taint the panel, as its members understood that offers to settle are made in civil litigation without acknowledging liability, and as they found nothing unusual or prejudicial about such an offer, particularly when Mr. Garside acknowledged that he had borrowed \$95,000 which had to be repaid in any event; and
- that, as a result of the above, the motion for a mistrial was dismissed.

## **The Decision on Charges Nos. 1 to 4**

The issue was whether there was misappropriation by Mr. Garside, or an arrangement by him with Mr. Sparringa which permitted Mr. Garside to receive the funds which he did.

Mr. Cimba submitted that Mr. Sparringa was not a credible witness, and that, where his evidence conflicted with that of Mr. Garside as to whether or not he authorized Mr. Garside to take the funds, Mr. Garside and not Mr. Sparringa should be believed.

Mr. Sparringa did give evidence which seemed to conflict at least in part with some of the evidence of his former wife. It is also true that there was some question about Mr. Sparringa's memory following a head injury which he suffered in November, 1997. However, the differences in evidence, and the lapses on Mr. Sparringa's part, were not with respect to the core issues of his evidence, and, after seeing Mr. Sparringa and Mr. Garside give evidence, and after reviewing the evidence itself, this panel of the discipline committee concluded that it was Mr. Garside who was not the credible witness.

Early in his cross-examination, Mr. Garside, when confronted with some of the particular records and cheques, acknowledged that the records were false and that he had falsified them. His explanation was that he acted on the instructions of Georg Sparringa, and that he weighed those instructions against the risks of falsifying documents before deciding that he was going to maintain his employment and follow the instructions. He acknowledged that, looking back, he probably did not act in a manner which was appropriate, and stated specifically that he had made errors in judgment.



We were not persuaded that Mr. Garside's actions were merely errors in judgment. We concluded, instead, that he followed a deliberate course, over a number of months, of paying himself, directly or indirectly, a substantial amount of money over and above a good salary and car allowance, and did so without the agreement or knowledge of Mr. Sparringa.

As a result, Mr. Garside was found guilty of charges Nos. 1 to 4.

### **The Decision on Charge No. 5**

The defence to charge No. 5 was that Mr. Garside followed legal advice when he did not respond to the request for information from the Institute. It was submitted that he did not have an independent intention not to cooperate, but rather that he did not cooperate simply because of the legal advice he received.

There is no doubt that Mr. Garside did not cooperate and that he knew he was not cooperating. As the panel understands that acting upon legal advice is not a defence in law to a charge under Rule 203.2, and as the refusal to cooperate continued for more than six months, Mr. Garside was found guilty of this charge.

### **ORDER AS TO SANCTION**

The panel then went on to a determination of the appropriate sanction. Neither party called evidence with respect to sanction, but counsel for both parties made submissions. Mr. Farley, on behalf of the professional conduct committee, asked for the most serious sanction that the discipline committee could impose. He submitted that the principles of general and specific deterrence required that Mr. Garside be expelled, reprimanded, and fined \$25,000, and that full publicity of the decision and order be made.

Mr. Cimba, on behalf of Mr. Garside, submitted that, under the special circumstances of the case, an appropriate sanction would be a lengthy suspension with no publicity. He agreed, in light of the finding of guilty, that a reprimand and fine would be appropriate.

The panel acknowledged that all three general principles of sentencing, namely rehabilitation, general deterrence and specific deterrence, were relevant to its consideration of appropriate sanction in this case, and concluded that general and specific deterrence were the priorities.

The panel made the following order:

#### **ORDER**

It is ordered in respect of the charges:

1. THAT Mr. Garside be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Garside be and he is hereby fined the sum of \$25,000, 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. Garside be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Garside'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 Hamilton Spectator* and *The Globe and Mail*.
5. THAT Mr. Garside 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**

In keeping with past cases, the panel ordered that the member be reprimanded in writing by the chair of the hearing, to stress to him the serious nature of the offence and the unacceptability of his conduct as a chartered accountant.

### **Fine**

There is no question that Mr. Garside's conduct was entirely unacceptable. A fine of \$25,000 sends a strong message to other like-minded members that this type of conduct has no place in our profession. The fine also demonstrates to Mr. Garside that his conduct was unacceptable and will not be tolerated in this profession.

### **Expulsion**

Expulsion from the Institute is often ordered in cases of moral turpitude, and the panel determined that the serious nature of this case, involving misappropriation of funds, left it no alternative but to expel Mr. Garside. The chartered accounting profession cannot and will not tolerate members who gain positions of trust because of their qualifications and designations, and then use this trust to misappropriate funds for their personal benefit.

### **Notice**

The panel was aware that dispensing with publication of Mr. Garside's expulsion was within its discretion. However, the panel concluded there were no unusual circumstances present in this case to warrant its exercise of discretion in Mr. Garside's favour. The panel concluded that normal publication in *CheckMark* should proceed, and that notice should also appear in the *Hamilton Spectator* and *The Globe and Mail* newspapers.

**Certificate**

It is important that Mr. Garside no longer appear to be a member of the chartered accounting profession after his expulsion. Accordingly, the panel ordered Mr. Garside to surrender his certificate of membership to the committee's secretary.

DATED AT TORONTO THIS 7TH DAY OF APRIL, 1999  
BY ORDER OF THE DISCIPLINE COMMITTEE

L.P. BOOKMAN, CA – DEPUTY CHAIR  
THE DISCIPLINE COMMITTEE

**MEMBERS OF THE PANEL:**

P. B. A. CLARKSON, CA

B. L. STEPHENS, CA

R. D. WHEELER, FCA

R. W. WARKENTIN (Public representative)

## **APPEAL COMMITTEE re Barry Michael Garside**

**IN THE MATTER OF:** An appeal by **BARRY MICHAEL GARSIDE, CA**, a member of the Institute, of the Decision and Order of the discipline committee made on July 28, 1998, pursuant to the bylaws of the Institute, as amended.

### **DECISION AND REASONS FOR DECISION MADE OCTOBER 21, 1999**

This appeal was heard by a panel of the appeal committee of the Institute of Chartered Accountants of Ontario on October 21, 1999. Mr. Paul Farley appeared on behalf of the professional conduct committee, and Mr. James Cimba appeared for and with Mr. Garside.

#### **MOTION TO ADMIT FRESH EVIDENCE**

At the outset of the hearing, after advising the panel that Mr. Garside was only appealing the sanctions order made by the discipline committee, and not the findings of guilty on the charges laid, Mr. Cimba made a motion to introduce fresh evidence. The appellant's appeal book, which included a factum and written submissions, stated that the appeal would be "preceded by a motion to introduce fresh evidence which evidence was not available at the hearing of this matter in June and July of 1998". Mr. Farley responded that the professional conduct committee objected to Mr. Cimba's motion.

Mr. Cimba indicated that the materials he wished to introduce were highly relevant to Mr. Garside's case, especially taking into account that the discipline committee hearing had been concluded in July of 1998, and the written reasons for the decision and order had not been released until approximately eight months later, which was an extraordinary delay that could result in the denial of natural justice to Mr. Garside. Mr. Cimba indicated that it would be contrary to the three principles of sentencing, namely general deterrence, specific deterrence and rehabilitation, not to consider this fresh evidence, which would deal with the three principles. He emphasized that the new evidence he wished to submit would show that Mr. Garside was well on his way through the rehabilitation process, and would be very relevant to the appeal committee's review of the discipline committee's order.

Mr. Farley argued that Mr. Cimba's material was not relevant, as it was not in existence at the time the discipline committee made its decision and order in the case. He also indicated that, although the reasons for the decision and order were not issued until some eight months after the hearing, the decision and order had been pronounced orally on the last day of the hearing, and Mr. Garside had been aware of the decision and order since then.

Mr. Bryan Finlay, counsel to the appeal committee, asked Messrs. Farley and Cimba whether either of them was aware of any authority from past appeal committee cases that might assist the panel to determine whether or not it should admit new evidence on this appeal. Neither was able to do so, and indicated that there was an absence of authority on the point.

Mr. Finlay advised the panel that, while the general principle is that an appeal committee deals only with the evidence that was before the tribunal being appealed from, in some circumstances it can entertain new evidence. He further advised that there was not a natural justice issue in this case as to whether or not fresh evidence should be admitted. Some of the evidence sought to be introduced did not exist at the time of the discipline hearing, and some of it, in the form of character references, could have been made available by Mr. Garside to the discipline committee, but the member chose not to do so. After deliberating on the matter, the panel concluded that it would not hear new evidence, but would deal only with the evidence that was before the discipline committee.

Mr. Cimba responded that, upon reflection, the materials he was tendering should not be considered as "fresh evidence", but as continuing evidence in areas opened up by Mr. Farley at the discipline hearing, relating to a civil settlement which had been proposed by Mr. Garside to Mr. Sparringa, and to criminal proceedings which had been initiated against Mr. Garside. Mr. Cimba also indicated that an article from *The Hamilton Spectator*, reproduced at Tab D of his appeal book, went to the issue of publication, which was one of his points of appeal. Mr. Farley responded that he was prepared to consent to the admission of the article from *The Hamilton Spectator*, but did not consent to the admission of the other items of new evidence.

Upon further deliberation, the panel decided that, as Mr. Farley did not object to the introduction into evidence of *The Hamilton Spectator* article, this evidence would be admitted. It also decided to admit into evidence the information contained at Tab B of the appellant's appeal book, being copies of the Order of the Superior Court of Justice in the related civil litigation, the Full And Final Release of Mr. Garside and others in that proceeding, a trust cheque from the account of Burns, Cimba in the amount of \$205,000, and a letter signed by Georg Sparringa addressed To Whom It May Concern, confirming the resolution of the civil action, and indicating that Mr. Sparringa had no particular desire to see Mr. Garside go to jail for his actions. This evidence was accepted by the panel on the basis that it was not, in fact, new evidence, but continuing evidence on the issue raised at the discipline committee hearing relating to the nature of any civil settlement between the parties. The other documents contained in the appellant's appeal book were not allowed into evidence by the panel. The hearing then continued.

## **DECISION ON THE DISCIPLINE COMMITTEE ORDER**

Mr. Cimba's submissions to the appeal committee were aimed at seeking the following changes to the discipline committee's order:

- the reduction or elimination of the fine imposed;
- the substitution of a period of suspension for expulsion;
- the vacating of the order of publication in *CheckMark*, *The Hamilton Spectator* and *The Globe and Mail*; and
- such other variances to the order as may be appropriate, in recognition of the positive acts of the appellant since October 1997, and the punishment received since then.

After reviewing the documents filed, and hearing the submissions of both counsel, the panel decided to vary paragraph 4(d) of the discipline committee's order of July 28, 1998, by deleting therefrom the provision that publication be made in *The Hamilton Spectator*, and to confirm all other aspects of the order. The member and his counsel were not present to hear the panel's order, as they had requested and been granted permission to leave the hearing after completion of submissions, but were later advised by the committee secretary of the panel's decision, and were told that written reasons for the decision would follow in due course. These are those reasons.

The discipline committee found Mr. Garside guilty of charges of professional misconduct under Rules of Professional Conduct 201.1 and 203.2. After finding the member guilty of the charges, the discipline committee went on to make the following order:

1. THAT Mr. Garside be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Garside be and he is hereby fined the sum of \$25,000, 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. Garside be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Garside'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 Hamilton Spectator* and *The Globe and Mail*.
5. THAT Mr. Garside 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.

### **Member's Grounds for Appeal**

The grounds for Mr. Garside's appeal were as follows:

- The reasons for the decision and order of the discipline committee were not released until April 7, 1999, being eight months and one week after the making of the decision and order on July 28, 1998.
- Mr. Garside has not worked as a chartered accountant since the end of his employment with the complainant Georg Sparringa in the spring of 1997.
- Mr. Garside commenced employment with Canadian Tire in October 1997, and remains in its employ. He started working for that company as a transportation analyst on a contract basis, and was promoted in February 1999 to his current position as distribution operations support manager. Mr. Garside has received highly positive employment reviews, including a glowing performance report from the senior vice-president of his division, as well as other accolades.

- There has been a complete resolution and settlement of the civil litigation related to this matter, and Mr. Garside has paid settlement proceeds of \$205,000, which has left him and his wife without any unencumbered assets.
- There has been a satisfactory resolution of the criminal proceedings against Mr. Garside.
- The member has endured premature adverse publicity of this case in *The Hamilton Spectator*.

Mr. Cimba stated that the fine imposed by the discipline committee of \$25,000 was unreasonable in terms of Mr. Garside's current earnings, and his final settlement arrangements with Mr. Sparringa. He also stated that newspaper publication of Mr. Garside's name was not appropriate, as he had already received wide adverse publicity from *The Hamilton Spectator* article of July 31, 1998, and submitted that Mr. Garside had demonstrated his ability to be rehabilitated since the making of the discipline committee order against him.

Mr. Cimba indicated that both Mr. And Mrs. Garside's employment with Canadian Tire would be at risk in the event of widespread negative publicity, and that, by virtue of the fact that the article which had been published in *The Hamilton Spectator* on July 31, 1998, amounted to newspaper publication of notice of this matter in the local geographic area of the member's residence or occupation, as stipulated in Bylaws 575(3) and 654(3), the requirement for newspaper publication of expulsion had been satisfied.

### **Respondent's Submissions**

Mr. Farley responded to Mr. Cimba's submissions as follows:

- He submitted that the appeal committee should apply the principle cited in the appeal committee case of Jay J. Granatsein from the Newfoundland Court of Appeal case of R. v. Basha (1980), 61 A.P.R., 23 Nfld & PEI R. 286, at page 299, that "a court of appeal should only interfere with a trial judge's discretionary powers as to sentencing if it is apparent that the judge has misapplied one or other of the accepted principles of sentencing, in all the circumstances of the case, with the result that the sentence imposed is outside the range of sentencing for that type of offence". He then cited a number of precedent cases to show that the financial penalty imposed upon Mr. Garside was within the bounds of other similar cases.
- Responding to a comment made by Mr. Cimba on the matter of Mr. Sparringa's credibility, Mr. Farley pointed out to the panel that, having had the opportunity to hear both Mr. Garside and Mr. Sparringa give evidence before coming to its conclusion, the discipline committee had concluded that it was Mr. Garside who was not the credible witness.

- With respect to the issue of publication, Mr. Farley indicated that publication disclosing a guilty member's name is a very effective sanction, as both a general and a specific deterrent, and that as far as newspaper publication is concerned, it can only be dispensed with if the panel determines both that it is unnecessary for the protection of the public and would be unfair to the member. He submitted that the article in *The Hamilton Spectator* does not satisfy the bylaw requirement that the Institute give notice of expulsion of its members to the public.

### **Panel's Determination**

The panel asked Messrs. Cimba and Garside numerous questions relating to Mr. Garside's employment at Canadian Tire, including whether his employer or co-workers were aware of these disciplinary proceedings or the circumstances which gave rise to them.

The panel considered the submissions made, and determined as follows:

- The delay in the release of the written reasons by the discipline committee did not in any way disadvantage Mr. Garside. The discipline panel made and announced its decision and order on July 28, 1998, the final day of the hearing, and Mr. Garside had until the expiry of a thirty day appeal period following his receipt of the written reasons many months later to determine whether or not to appeal, and how to formulate his appeal. As he remained a member of the Institute in good standing throughout that period of time, it is difficult to see how Mr. Garside was prejudiced by the length of time taken to issue the discipline committee's reasons.
- The fact that Mr. Garside was not currently working as a chartered accountant, and had not done so since the spring of 1997, was not a factor that the panel felt was relevant to its deliberations.
- Mr. Garside's employment with Canadian Tire, and the fact that his employer might not be aware of these disciplinary proceedings, were also not factors to be taken into account, the panel determined.
- The appeal committee should not consider itself at liberty to reduce the quantum of a fine levied by the discipline committee solely on the basis of the apparent inability of the member to pay the fine imposed.

The issue before the appeal committee was whether or not the discipline committee, upon consideration of all the evidence and submissions before it, properly exercised its discretion, and imposed a sanction within an appropriate range of sanctions given the facts of this particular case. Unless there was an error in principle made, or unless the sanction imposed was not within the appropriate range of sanctions consistent with earlier similar cases, the appeal committee determined that, other than in respect of the issue of publication in *The Hamilton Spectator*, it should not disturb the penalty and substitute its judgment for that of the discipline committee.



The panel's conclusion, therefore, as stated above, was that, in light of the article relating to Mr. Garside's conviction and sentencing by the discipline committee which appeared in *The Hamilton Spectator* within a few days after the conclusion of the discipline hearing, paragraph 4(d) of the discipline committee's order should be varied by deleting therefrom the provision that publication be made in *The Hamilton Spectator*. In all other respects, the discipline committee's order of July 28, 1998 was confirmed.

DATED AT TORONTO THIS 21ST DAY OF DECEMBER, 1999  
BY ORDER OF THE APPEAL COMMITTEE

MARVIN B. MARTENFELD, FCA – DEPUTY-CHAIR  
THE APPEAL COMMITTEE

MEMBERS OF THE PANEL:

R.J.L. BOWMAN, CA

C.J. BURKE, FCA

D.J. HERLICK, CA

L.L. WORTHINGTON, FCA

V. INGLIS (Public representative)