

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: A charge against **BIRINDER SINGH KHANGURA, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Birinder S. Khangura

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision and Order made November 16, 2010)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants met on November 16, 2010 to hear a charge of professional misconduct laid by the Professional Conduct Committee against Birinder S. Khangura, CA, a member of the Institute.
2. Alix Hersak appeared on behalf of the Professional Conduct Committee. Mr. Khangura and his counsel, John Blair, did not attend the hearing. Glenn Stuart attended the hearing as counsel to the Discipline Committee.
3. The panel determined that Mr. Khangura had been provided proper notice of the hearing and decided to proceed in his absence.
4. The decision of the panel was made known at the conclusion of the hearing and the written Decision and Order sent to the parties on November 22, 2010. These reasons, given pursuant to Bylaw 573, contain the charge, the decision, the order, and the reasons of the panel for the decision and order.

CHARGE

5. The following charge was laid by the Professional Conduct Committee against Mr. Khangura on July 20, 2010:

1. THAT the said Birinder S. Khangura, in or about the period January 1, 2002 through December 31, 2007, while a shareholder and director of Xpress Lube and Car Wash Ltd. failed to conduct himself in a manner that 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 has confirmed the following in a sanction agreement with the Complainants Inquiry Committee of the Alberta Institute of Chartered Accountants:

- a. He associated himself with the taxable income reported in the federal and provincial tax returns of Xpress Lube and Car Wash Ltd. for the years 2003 through 2006, when he knew or ought to have known they were false or misleading in that

approximately \$137,900 of taxable income was not reported;

- b. He associated himself with the GST returns of Xpress Lube and Car Wash Ltd. for the years 2003 through 2006, when he knew or ought to have known that the returns were false and misleading in that approximately \$9,600 of goods and services tax was not reported;
- c. He associated himself with financial statements of Xpress Lube and Car Wash Ltd. for the years ended 2002 to 2006 when he knew or ought to have known that the statements were false and misleading in that revenue of approximately \$223,600 was understated; and
- d. He associated himself with his personal income tax returns for the years 2002-2003 during which time he failed to report income of approximately \$19,000 received from Xpress Lube and Car Wash Ltd.

PLEA

6. A plea of not guilty was entered on behalf of Mr. Khangura.

EVIDENCE

7. The evidence in this matter consisted of a certified copy of a sanction agreement (Exhibit 3), between the Institute of Chartered Accountants of Alberta and Mr. Khangura, setting out the same facts. In that agreement, Mr. Khangura, a director and shareholder of the relevant companies, admitted to associating himself with false and misleading federal and provincial income tax and GST returns for himself and Xpress Lube and Car Wash Ltd. During the years 2002 and 2003 he failed to report personal income of approximately \$19,000. He prepared tax returns for the company during the period 2003 to 2006 and failed to report \$9,600 in GST and \$137,900 of taxable income. Revenues of the company were understated by \$223,600 for the period 2002 to 2006.

DECISION

8. The evidence in this matter is clear, cogent, convincing and uncontradicted, and establishes the professional misconduct alleged in the charge. After deliberating, the panel made the following decision:

THAT, having determined to proceed with the hearing in the absence of Mr. Khangura, pursuant to Bylaw 560, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to the charge, and having seen and considered the evidence, the Discipline Committee finds Birinder Singh Khangura guilty of the charge.

REASONS FOR THE DECISION

9. The acts for which Mr. Khangura was charged under Rule 201.1 were not committed in Ontario, but were the subject of discipline proceedings and sanction in Alberta, where he was also a member.

10. The finding and sanction of the Institute of Chartered Accountants of Alberta were considered by this panel, pursuant to Rule 201.3:

Notwithstanding any other provisions of the bylaws or these rules of professional conduct, where a member or firm is charged under Rule 201.1 on account of having been suspended or expelled or having a restriction placed on the member's or firm's right to practise through the disciplinary process of another provincial institute, and a certified copy of the other provincial institute's disciplinary decision and order is filed with the discipline or appeal committee, there is a rebuttable presumption that the member or firm charged failed to maintain the good reputation of the profession and its ability to serve the public interest.

11. This panel received a certified copy of the sanction agreement with the Alberta Institute in which Mr. Khangura agreed to cancellation of his registration, payment of a fine and costs and full publicity. While it is not a "disciplinary decision and order" in the format used by this Institute, it does contain the same information, and "is to be considered and treated, for all purposes, as a decision and order" under the Alberta Regulated Accounting Profession Act (Exhibit 4). We have therefore found it to be included within the ambit of decision and order document as specified in Rule 201.3.

12. The rebuttable presumption of a breach of Rule 201.1 therefore arises. No information or evidence was brought before the panel to displace that presumption. The panel notes that Mr. Khangura was aware of today's hearing and its possible outcome, through his lawyer's correspondence with the Institute, and chose not to attend or participate (Exhibits 1 and 2). Mr. Khangura is, by the operation of Rule 201.3, guilty of breaching Rule 201.1. That breach was of a serious nature, and constitutes professional misconduct.

SANCTION

13. Ms. Hersak, on behalf of the Professional Conduct Committee, submitted that a sanction of: a written reprimand; expulsion; and full publicity of this matter is appropriate and required in this case. She did not seek a fine since a \$60,000 fine had been imposed by the Alberta Institute. Costs were not sought since they were mainly administrative in this matter due to the high degree of cooperation by Mr. Khangura and his counsel.

14. While Ms. Hersak noted a number of factors in mitigation, including the fact that Mr. Khangura has no discipline record, he cooperated with the investigation, he has fully satisfied the Alberta order, and made voluntary disclosure to the Canada Revenue Agency (CRA). She also pointed out that Mr. Khangura engaged in dishonest behaviour in the evasion of federal and provincial taxes involving a substantial sum of money, and that such an act is one of significant moral turpitude and requires the sanction of expulsion.

15. Mr. Khangura has not resided or worked in Ontario since 1990, so there is no issue of protection of the public in this province. Since this matter was the subject of extensive publicity in Alberta, Ms. Hersak submitted that no newspaper publication was being sought.

16. Mr. Khangura, who was aware the Professional Conduct Committee was seeking a sanction of expulsion and publicity, made no submissions as to the propriety of that position. If expelled, Mr. Khangura has undertaken not to re-apply for membership in Ontario.

ORDER

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

IT IS ORDERED in respect of the charge:

1. THAT Mr. Khangura be reprimanded in writing by the chair of the hearing.
2. That Mr. Khangura be and he is hereby expelled from membership in the Institute.
3. THAT notice of this Decision and Order, disclosing Mr. Khangura's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
 - (a) to all members of the Institute; and
 - (b) to all provincial institutes/Ordre,and shall be made available to the public.
4. THAT Mr. Khangura 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.

REASONS FOR THE ORDER

18. Mr. Khangura prepared and associated himself with false and misleading statements for the purpose of evading taxes over a six year period. These actions were not isolated lapses in judgement but repeated attempts to deceive CRA. Such acts bring the entire profession into disrepute and cannot be tolerated. The Institute of Chartered Accountants of Alberta has already cancelled Mr. Khangura's registration. Ontario can take no lesser action.

19. The Professional Conduct Committee has sought a written reprimand in this case, and the panel has acquiesced. A reprimand is intended to reinforce to the member the severity of the conduct and the Institute's disapprobation. Such reinforcement may not be necessary when Mr. Khangura's connection to the Ontario Institute is both tenuous and dated, and expulsion itself may be expected to achieve those objects in a more forceful manner than a reprimand could, however a reprimand emphasizes the seriousness of the transgressions and the damage he has brought to the whole profession.

20. Ordinarily, the panel would impose a fine for such conduct, to ensure not only that the member understood the gravity of his offence, but that he and any other person tempted to abuse the public trust would be deterred. In this case, the Professional Conduct Committee has not sought a fine, on the basis that Mr. Khangura was fined by the Alberta Institute for this conduct and that it would be inappropriate for this Institute to increase that sanction without any increase in culpability. The panel agrees with that submission.

21. Although Mr. Khangura is not resident or practising in this province, it is important that the membership, the public, and other interested regulators know the sanction imposed by this Institute. The publicity ordered is required to achieve that object.

22. Bylaw 575(3) reads, in part, as follows:

Notice of expulsion of any member ... shall be given to the public by publication on the Institute's website and in a newspaper or newspapers distributed in the geographic area of the member's current or former practice, employment and/or residence, or in such other manner as the

discipline committee may determine to be appropriate, unless the committee determines that the circumstances of the case are of a nature that such notice is not necessary for the protection of the public and would be unfair to the member, in which case the committee shall provide written reasons for not ordering publication of the notice.

23. The panel considered the provisions of this Bylaw, and has ordered publication on the Institute's website and in *CheckMark*. However, it has not ordered newspaper publication. Mr. Khangura has not resided or practised in Ontario for over twenty years. He has no substantive connection to this jurisdiction. His connection, his residence and his practice are all in Alberta. His cancellation of registration was published in the Membership Activity Report of the Alberta Institute, the *Calgary Herald* and the *Sikh Versa*. The members of the public who might be at risk from Mr. Khangura are within that catchment area, and have been protected, to the extent that newspaper publication can provide protection. Publication in a newspaper in Ontario would not further that protection, and it would work an inequity to Mr. Khangura, as he would be required to pay the costs of such publication (Bylaw 575(3.1)).

24. The panel has ordered that Mr. Khangura be expelled from membership in the Institute. Mr. Khangura, therefore, no longer has a right to possess a membership certificate from the Institute.

25. The costs involved in the investigation and hearing into Mr. Khangura's misconduct are insignificant, in large measure because of his cooperation with the Institute's Professional Conduct Committee. As no bill of costs was submitted by the Professional Conduct Committee, there was no basis for determining costs. Therefore, no costs were imposed.

DATED AT TORONTO THIS 24TH DAY OF JANUARY, 2011
BY ORDER OF THE DISCIPLINE COMMITTEE

A.D. NICHOLS, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

J.B. BARRACLOUGH, FCA
R.H. CARRINGTON (PUBLIC REPRESENTATIVE)
J.H. FRIDAY, FCA
D.L. KNIGHT, FCA