

## **Brian Frederick Bennett: Summary, as Published in *CheckMark***

**Brian Frederick Bennett**, of St. Agatha, was found guilty of a charge of professional misconduct, under Rule 201.1, of failing to maintain the good reputation of the profession and its ability to serve the public interest, by reason of having been convicted of the Criminal Code offence of theft of property having a value exceeding \$1,000. While the president of a company, he deposited into his personal bank account three cheques totalling more than \$4,900, which were intended as payments from the company's clients to the company. He was fined \$1,000 and suspended for one year.

In deciding not to expel him, the discipline committee felt that the member deserved a chance for rehabilitation. Mr. Bennett was owed more money in expense reimbursements by his company than the amount which diverted. He reported his theft to the company before being confronted, and provided full restitution. He also voluntarily reported his criminal conviction to the Institute.

**Brian Frederick Bennett**, of St. Agatha, was found guilty under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest, as a result of his Criminal Code conviction of theft of property having a value exceeding \$1,000. He was fined \$1,000 and suspended for one year. As a result of his failure to pay the fine within the time specified, Mr. Bennett was expelled from the Institute pursuant to the discipline committee's order. (This matter was first reported in the July 1994 issue of *CheckMark*)

## **CHARGE(S) LAID re Brian Frederick Bennett**

The Professional Conduct Committee hereby makes the following charges against Brain F. Bennett, a suspended member of the Institute:

1. THAT, the said Brain F. Bennett, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that on about the 2<sup>nd</sup> day of June 1993, he was convicted of a criminal offence namely, that between the 6<sup>th</sup> day of August and the 8<sup>th</sup> day of September in the year 1992 at the City of Waterloo he did unlawfully steal money, the property of Vision Wear Incorporated of a value exceeding \$1,000 contrary to section 334(a) of the Criminal Code of Canada and further that he did between the 6<sup>th</sup> day of August of the 8<sup>th</sup> day of September in the year 1992 at the City of Kitchener unlawfully steal money, the property of the Toronto Dominion Bank of a value exceeding \$1,000 contrary to section 334(a) of the Criminal Code of Canada, all of which is contrary to Rule 201.1 of the rules of professional conduct.

Dated at Toronto, this 30th day of November, 1993.

JENNIFER L. FISHER, CA - CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

## DISCIPLINE COMMITTEE re Brian Frederick Bennett

**DECISION AND ORDER IN THE MATTER OF:** A charge against **BRIAN FREDERICK BENNETT**, a suspended member of the Institute, under **Rule 201.1**, of the Rules of Professional Conduct, as amended.

### DECISION AND ORDER MADE FEBRUARY 22, 1994

#### DECISION

THAT, having seen and considered the evidence, and having heard the plea of guilty to the charge, THE DISCIPLINE COMMITTEE FINDS Brian Frederick Bennett guilty of the charge.

#### ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Bennett be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Bennett be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within one (1) year from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Bennett be suspended from the rights and privileges of membership in the Institute for a period of one (1) year from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Bennett's name, be given after this Decision and Order becomes final under the bylaws:
  - (a) by publication in *CheckMark*;
  - (b) to the Public Accountants Council for the Province of Ontario; and
  - (c) to the Canadian Institute of Chartered Accountants.
5. THAT Mr. Bennett surrender his certificate of membership in the Institute to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held by the registrar during the period of suspension and thereafter returned to Mr. Bennett.
6. THAT in the event Mr. Bennett fails to comply with any of the requirements of this Order within the time periods specified, he shall thereupon be expelled from the rights and privileges of membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified in paragraph 4 hereof.

DATED AT TORONTO THIS 1ST DAY OF MARCH, 1994  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

## **DISCIPLINE COMMITTEE re Brian Frederick Bennett**

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

### **WRITTEN REASONS FOR THE DECISION AND ORDER MADE FEBRUARY 22, 1994**

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on February 22, 1994.

Ms. Deborah McPhadden attended on behalf of the professional conduct committee, and Mr. Bennett attended without counsel.

The professional conduct committee had laid one charge, under Rule of Professional Conduct 201.1, and Mr. Bennett pleaded guilty to the charge. The member confirmed that he understood that upon a plea of guilty, and upon that basis alone, he could be found guilty of the charge.

The charge laid by the professional conduct committee against Mr. Bennett reads as follows:

*THAT, the said Brian F. Bennett, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that on about the 2nd day of June 1993, he was convicted of a criminal offence namely, that between the 6th day of August and the 8th day of September in the year 1992 at the City of Waterloo he did unlawfully steal money, the property of Vision Wear Incorporated of a value exceeding \$1,000, contrary to section 334(a) of the Criminal Code of Canada and further that he did between the 6th day of August of [sic] the 8th day of September in the year 1992 at the City of Kitchener unlawfully steal money, the property of the Toronto Dominion Bank of a value exceeding \$1,000, contrary to section 334(a) of the Criminal Code of Canada, all of which is contrary to Rule 201.1 of the rules of professional conduct.*

In June of 1993, Mr. Bennett was found guilty of the Criminal Code offence referred to in the above charge. The transcript of the criminal court proceedings against Mr. Bennett, which was filed as an exhibit, outlined the history of events that led to the charge. Mr. Bennett was president of Vision Wear Incorporated, a subsidiary of K-W Optical. During the period August 6 to September 8, 1992 he deposited three cheques into his personal bank account totalling \$4,996.49, which were intended as payments from clients to the company Vision Wear.

Based on the evidence, the criminal conviction and the member's guilty plea, the discipline committee found Mr. Bennett guilty of the charge.

The committee then heard submissions as to sanction and, after deliberations, made the following order:

## ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Bennett be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Bennett be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within one (1) year from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Bennett be suspended from the rights and privileges of membership in the Institute for a period of one (1) year from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Bennett's name, be given after this Decision and Order becomes final under the bylaws:
  - (a) by publication in *CheckMark*;
  - (b) to the Public Accountants Council for the Province of Ontario; and
  - (c) to the Canadian Institute of Chartered Accountants.
5. THAT Mr. Bennett surrender his certificate of membership in the Institute to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held by the registrar during the period of suspension and thereafter returned to Mr. Bennett.
6. THAT in the event Mr. Bennett fails to comply with any of the requirements of this Order within the time periods specified, he shall thereupon be expelled from the rights and privileges of membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified in paragraph 4 hereof.

The reasons for the committee's order as to sanction are set out below.

### Suspension

In determining sanction, the committee gave consideration to the principles of general deterrence, specific deterrence and rehabilitation. As stated by the discipline committee in the case of Paul William Stinchcombe, which was referred to in submissions, in almost all cases in which a member is found guilty of a charge involving moral turpitude and fraud, the member is expelled from the Institute. Notwithstanding this, however, the committee in Stinchcombe found the particular circumstances so compelling as to warrant departing from the usual disposition, and, rather than expel Mr. Stinchcombe, the committee suspended him for a year. Likewise, in this case the discipline committee is of the view that a one year suspension, rather than expulsion, is an appropriate sanction for Mr. Bennett. The mitigating factors which lead the committee to believe that Mr. Bennett is deserving of a chance for rehabilitation are that

- Mr. Bennett was under severe stress financially and from pressures to make Vision Wear profitable;
- his misconduct took place over a short period of time;
- the member was owed more money by the company than the amount he

diverted (all he had to have done was to submit his expenses to his employer for payment);

- he reported the theft to his employer prior to being confronted, and provided full restitution;
- he reported his criminal conviction to the Institute within a couple of days of his conviction;
- the member demonstrated great remorse.

Being satisfied that it is unlikely Mr. Bennett will become involved in this kind of activity in the future, the discipline committee determined that a suspension of one year is the appropriate sanction in the circumstances of this case, rather than the expulsion of the member.

#### Fine

Counsel for the professional conduct committee suggested a fine of \$2,000. The member gave evidence of his personal financial position and asked that it be taken into consideration. The committee determined that a fine of \$1,000, with a lengthy period to pay, is appropriate, as it was satisfied that the member's financial position precludes him from paying a higher amount.

#### Notice

The committee followed its normal order as to providing notice of its proceedings, including disclosure of the member's name. It is important to a self-governing body like the Institute that its disciplinary process be publicized.

DATED AT TORONTO, THIS \_\_\_\_\_ DAY OF MAY, 1994  
BY ORDER OF THE DISCIPLINE COMMITTEE

R.C.H. ANDREWS, CA - CHAIR  
THE DISCIPLINE COMMITTEE

#### MEMBERS OF THE PANEL:

L.P. BOOKMAN, CA  
H.R. KLEIN, CA  
P. RAYSON, CA  
L.L. WORTHINGTON, FCA  
B.A. YOUNG, PEng (Public representative)