

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

APPEAL COMMITTEE

IN THE MATTER OF: An appeal by the Professional Conduct Committee, of the Order of the Discipline Committee made on October 21, 2010, pursuant to the bylaws of the Institute, as amended.

TO: The Professional Conduct Committee, ICAO

AND TO: Brian Buckles

REASONS
(Decision Made February 21, 2012)

1. This appeal was heard by a tribunal of the Appeal Committee of the Institute of Chartered Accountants of Ontario on February 21, 2012. Paul Farley appeared on behalf of the Professional Conduct Committee (PCC). Mr. Buckles attended and was represented by James Lane. Peter Carey attended the hearing as counsel to the Appeal Committee.

2. The following charges were laid against Mr. Buckles by the Professional Conduct Committee on February 12, 2009:

1. THAT, the said Brian Buckles, on or about the 9th day of October 2007, was convicted of Criminal Code of Canada offences as set out in Schedule "A" attached to this charge and Controlled Drugs and Substances Act offences as set out in Schedule "B" attached to this charge and did thereby fail to act 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.
2. THAT, the said Brian Buckles, on or about the 24th day of July 2008, was convicted of a Criminal Code of Canada offence as set out in Schedule "C" attached to this charge and did thereby fail to act 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.
3. THAT, the said Brian Buckles, on or about the 22nd day of November, 2006 associated himself with unlawful activity as described in counts one and six in the Information attached as Schedule "A" to this charge and in counts one, three and four in the Information attached as Schedule "B" to this charge and in the single count in the information attached as Schedule "C" to this charge, contrary to Rule 213 of the Rules of Professional Conduct.

3. The Decision made June 24, 2009 and Order appealed from, dated October 21, 2010, reads as follows:

DECISION

THAT having heard the plea of guilty to the charges, and having seen and considered the evidence, the Discipline Committee finds Brian Buckles guilty of the charges

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Buckles be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Buckles be and he is hereby fined the sum of \$5,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Buckles continues to be suspended from the rights and privileges of membership in the Institute until November 18, 2010.
4. THAT Mr. Buckles engage an addiction physician who shall conduct an appropriate intensive monitoring program that will include urine drug screening and regular follow-up for a period of five (5) years. The results of the drug screens are to be provided to the Director of Standards Enforcement on a quarter-yearly basis. This program is to commence no later than December 1, 2010. If, in the opinion of the attending addiction physician, there is an increase in the risk that Mr. Buckles will relapse, Mr. Buckles shall submit to an immediate in-patient assessment and treatment as deemed necessary by the attending physician. The arrangement Mr. Buckles makes with the addiction physician shall authorize and direct the physician to immediately report to the Director of Standards Enforcement any non-compliant event, including the failure of Mr. Buckles to comply with any in-patient assessment and treatment deemed necessary. Events of non-compliance shall result in the immediate suspension of Mr. Buckles.
5. THAT notice of this Decision and Order, disclosing Mr. Buckles'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.

IT IS FURTHER ORDERED:

6. THAT Mr. Buckles be and he is hereby charged costs fixed at \$5,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.

AND IT IS FURTHER ORDERED:

7. THAT in the event Mr. Buckles fails to comply with any of the requirements of this Order, he shall be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three (3) month period, he shall be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in *The Hamilton Spectator*. All costs associated with the publication shall be borne by Mr. Buckles and shall be in addition to any other costs ordered by the committee.
4. On this appeal, the PCC seeks to have paragraphs 3 and 4 of the Order of the Discipline Committee deleted and substituted with an order for revocation of Mr. Buckles' membership. The PCC seeks to have paragraph 7 amended by deleting the part dealing with failure to comply resulting in suspension but leaving the requirement for notice of Mr. Buckles' revocation in the *Hamilton Spectator*. Mr. Farley also submitted that the Appeal Committee should allow costs to the PCC on this appeal.
5. The tribunal reviewed and heard submissions made by Messrs. Farley and Lane, including the Appeal Book (Appeal Book Index filed as Exhibit 1), factums and books of authorities.

Submissions

6. Mr. Farley, on behalf of the PCC, submitted that the Discipline Committee erred in not ordering revocation of Mr. Buckles' membership. It was the position of the PCC that the Discipline Committee had misapprehended the facts of the case and the principles of general deterrence had been misapplied. There had been a failure to properly follow the precedents for serious misconduct cases involving moral turpitude.
7. Mr. Farley submitted that there was no question as to Mr. Buckles' guilt. He had pleaded and been found guilty of all the charges before the Discipline Committee. Mr. Buckles was convicted, in criminal court, of possession of: a prohibited firearm, a prohibited weapon and a stolen Ruger revolver (later replaced by possession of a restricted firearm). Mr. Buckles was also convicted of the unlawful production of a controlled substance and possession of a controlled substance for the purpose of trafficking.
8. Mr. Farley stated that the Discipline Committee had made errors of fact as evidenced in their reasons which would impair their ability to assess how bad the wrongdoer was compared to other wrongdoers. The tribunal failed to recognize and not take into account the seriousness of the actual convictions made against Mr. Buckles. Mr. Farley stated that the Discipline Committee had made reference in the reasons to convictions for less serious drug and weapons offences that carried lesser penalties than those offences Mr. Buckles was convicted of.
9. Mr. Farley submitted that the tribunal had erred in concluding that the misconduct of the member had not caused harm to employers, clients or members of the public. The offences for which Mr. Buckles was convicted all carry significant potential sentences and trafficking of illegal substances does harm the public. There was newspaper publicity in this matter which identified Mr. Buckles as a chartered accountant, thereby damaging the reputation of the profession.

10. Mr. Farley submitted that the tribunal had imposed a penalty that did not meet the facts of the case. On July 7, 2009, the Discipline Committee had ordered the interim suspension of Mr. Buckles until the committee ordered otherwise and reconvened the hearing on October 21, 2010 after his release from jail. The Discipline Committee ordered that Mr. Buckles be suspended until November 18, 2010, essentially a one-month suspension. Although there was no specific course of treatment in place and Mr. Buckles was at risk of relapse, the tribunal treated his misconduct as an illness and ordered a monitoring and reporting program through an addiction physician. Mr. Farley stated that revocation of Mr. Buckles' membership would have been a more appropriate course of action under the circumstances. Mr. Buckles could reapply for membership after five years, giving him an opportunity to prove that he had been rehabilitated. Mr. Farley submitted that the Discipline Committee had erred in concluding it would be inappropriate to expel Mr. Buckles with the knowledge he could reapply for membership because to do so would be putting an issue over to another panel which this panel thought it should decide. Mr. Farley submitted that in so doing, the Discipline Committee had nullified the process by deciding issues that have been delegated to another committee to decide.

11. Mr. Farley stated that the Appeal Committee should interfere if it is apparent the Discipline Committee misapplied accepted principles of sentencing. He felt that the tribunal had misapprehended the principles of specific and general deterrence, resulting in an order that is outside the range for that type of offence. The principles of deterrence must be applied regardless of any penalties imposed by the courts. Mr. Farley referred the tribunal to previous discipline cases where the importance of general deterrence had been recognized in sanctioning members convicted of serious criminal conduct, including those with addiction problems.

12. Mr. Farley referenced the *Gary* case, noting that at the time of his discipline hearing Mr. Gary had made full restitution to clients, was undergoing rehabilitation treatment and had not been convicted of a criminal offence. Mr. Farley stated that this unique case should only be relied on if the circumstances are the same.

13. Mr. Farley submitted that Mr. Buckles had knowingly engaged in criminal conduct, and that the penalty ordered by the Discipline Committee was so far outside the range for similar cases that it must be overturned.

14. In respect to the test to be met before the Appeal Committee can or should interfere with a decision of the Discipline Committee, Mr. Lane submitted that the test has not been met in this case. The Discipline Committee had given careful consideration to the evidence presented and had provided its reasons for the decision made. Mr. Lane stated that the penalty in this matter fell within the range of comparable cases. Mr. Lane submitted that the precedents cited all have a unique set of facts that need to be taken into consideration. Although most cases involving criminal misconduct result in expulsion, the Discipline Committee has discretion in determining sanction.

15. Mr. Lane submitted that Mr. Buckles had not used his CA designation since shortly after his arrest in November 2006. Mr. Buckles went through a 32-month period of self-suspension, followed by a 16-month suspension by the Discipline Committee. Due to the length of time taken to resolve this matter, the Discipline Committee was better able to assess the progress of Mr. Buckles' course of rehabilitation by the time the final order was made.

16. Mr. Lane submitted that the individual points in the reasons concerning the nature of the convictions did not affect the overall gravity of the combined criminal offences of which Mr. Buckles was convicted. Since the reasons were written almost two years after the hearing of the evidence, there may have been minor points of confusion. Although the reasons, which are a brief summary of the facts of a case, do not list every detail of Mr. Buckles' convictions, it does not mean that the Discipline Committee did not take them into account in its deliberations.

17. Mr. Lane stated that the Discipline Committee had considered the protection of the public, including clients and employers of chartered accountants, and viewed the absence of harm to any such individual as a valid mitigating factor.

18. In response to the assertion that the Discipline Committee had nullified the process for expelled members to apply for readmission, Mr. Lane submitted that while the committee could have ordered expulsion with the knowledge that readmission was possible, it had imposed a lesser penalty.

19. Mr. Lane stated that any points misstated in the reasons did not mean that the Discipline Committee had misunderstood the evidence or misapplied principles. He felt it was highly doubtful that the decision made on sanction would have been impacted in any way. The committee's conclusions were supported by a number of relevant considerations as reflected in the reasons.

20. Mr. Lane submitted that the objective of general deterrence of like-minded members was met to a large extent by the criminal process and the resulting jail term served by Mr. Buckles. Mr. Lane submitted that the statements made in the Discipline Committee's reasons indicate a further penalty would not add significantly to deterrence.

21. Mr. Lane stated that the consequences of the Order do protect the public. A relapse on the part of Mr. Buckles would require in-patient treatment and the treating physician would be required to report to the Institute. The consequence of non-compliance would result in the suspension of Mr. Buckles and ultimately in revocation of his membership. Mr. Lane submitted that Mr. Buckles did not abuse his CA designation by victimizing clients.

22. Mr. Lane stated that the *Gary* case is the closest precedent to Mr. Buckles' case where a similar penalty was imposed. Mr. Lane submitted that in the *Gary* case, the member had misappropriated money from clients to pay for his narcotics addiction. In Mr. Buckles' case, the addiction arose from the use of a highly addictive drug prescribed by a physician who was unable to oversee a course of treatment. The precedent authorities indicate that members charged with criminal misconduct are usually expelled but that the Discipline Committee will sometimes exercise its discretion to impose a lesser penalty.

23. Mr. Lane stated that the Discipline Committee had also considered similar precedents from other professional regulatory bodies. These authorities generally indicated that in cases of misconduct relating to drug addiction, consideration should be given to the need for rehabilitation and assistance for these professionals, as well as the appropriateness of rehabilitative sanctions.

24. Mr. Lane stated that the Order of the Discipline Committee should be upheld and not be substituted with revocation of Mr. Buckles' membership.

25. Mr. Farley responded that the Gary case differed in that he was not convicted of a criminal offence and incarcerated with publicity as in the case of Mr. Buckles. Also, Mr. Buckles' criminal charges relating to prohibited and restricted weapons had no connection to his addiction. Mr. Farley stated that there are no other Institute authorities to support Mr. Buckles' case.

Decision

26. Having considered the record and the submissions of the parties, this panel of the Appeal Committee varies the Order of the Discipline Committee as follows:

HAVING seen and considered the submissions made on behalf of the Professional Conduct Committee and on behalf of Mr. Brian Buckles, upon the Professional Conduct Committee's appeal of the Order of the Discipline Committee made on October 21, 2010, and upon reviewing all of the documentation provided, the Appeal Committee varies the Order of the Discipline Committee, without costs to the Professional Conduct Committee, as follows:

1. THAT Paragraphs 3 and 4 of the Discipline Committee's Order be deleted and be substituted therefore with an Order for revocation of Mr. Buckles' membership in the Institute.
2. THAT Paragraph 7 of the Order be amended by deleting that part dealing with failure to comply resulting in suspension but leaving the requirement for notice of revocation of Mr. Buckles' membership in the Hamilton Spectator.

Reasons

27. As has been stated in numerous previous appeals, it is not the role of the Appeal Committee to retry the case or to substitute its judgment for that of the Discipline Committee. Rather, the Appeal Committee is to consider the record and determine, based on that record, whether the findings of fact made by the Discipline Committee are supported by the evidence, and whether the decision is supported by the facts and the law.

28. The relevant facts in this matter were that Mr. Buckles was convicted of Criminal Code of Canada offences and Controlled Drugs and Substances Act offences. The Discipline committee found Mr. Buckles guilty of the charges that were dated February 12, 2009. The Discipline Committee in general terms ordered a sanction that included among other items a suspension and monitoring.

29. The Appeal Committee had a clear understanding of the facts of this case and fully understood that the Professional Conduct Committee was appealing the order for suspension and monitoring made by the Discipline Committee. The Professional Conduct Committee has requested an order for expulsion.

30. The Appeal Committee had a very good understanding of the principles of sanction. The issue in this case was whether the principle of general deterrence was given sufficient weight given the gravity of the criminal convictions.

31. The Appeal tribunal agreed with the submissions of the Professional Conduct Committee that the principle of general deterrence must be considered when determining the length of the

suspension. This tribunal considered the criminal offences involving drugs and guns to be extremely serious and the impact on society as a whole and the profession must be considered.

32. The tribunal also considered the submission of Mr. Lane that Mr. Buckles had not used his CA designation since November 2006 and that Mr. Buckles went through a period of self-suspension that totalled approximately 32 months and as a result of the lengthy time to resolve this matter, the Discipline Committee was in a better position to assess Mr. Buckles progress of his rehabilitation.

33. Mr. Lane in his submissions indicated that the principle of general deterrence was considered during the criminal proceedings and he felt that the jail time was a sufficient deterrent to like-minded members. This tribunal did not agree that our responsibilities relating to sanction were met by relying on the criminal justice system. Our profession is self-regulating and we must impose a sanction that is directed to our members and the general public.

34. This Appeal tribunal reviewed and considered the Gary case and the submissions by both counsel as to the relevance to the case at hand. This tribunal accepted the submission of Mr. Farley that the decision in the Gary Case was not relevant as Mr. Gary was not charged with any criminal offence, nor was Mr. Gary incarcerated with publicity as was the case with Mr. Buckles.

35. After considering all the submissions of the parties and a review of the precedent cases, the tribunal concluded that the Discipline Committee erred when it ordered a suspension. An interim suspension is "outside the normal range" for cases involving criminal offences involving drugs and guns. The tribunal concluded that the Discipline Committee erred as it placed too much emphasis on "rehabilitation" where this offence required a sanction that would "deter" other like-minded members. This tribunal did not find any extenuating circumstances that would support an order for a suspension versus revocation.

36. The Appeal Committee did not accept the submission of Mr. Lane that the general principles of sanction were properly addressed and that the principle of rehabilitation received the appropriate attention and that general deterrence was accomplished by the courts.

37. This tribunal of the Appeal Committee is of the unanimous view that revocation was the proper sanction in this case and so ordered.

Costs

38. Mr. Farley filed a Costs Outline (Exhibit 2) summarizing the time spent on this appeal, requesting that Mr. Buckles pay the nominal amount of \$5,000. Mr. Lane submitted that there should be no costs assessed against Mr. Buckles as this was an appeal made by the Professional Conduct Committee and that there is no opportunity for a member who appeals to seek costs.

39. The panel considered whether costs associated with the appeal should be awarded against Mr. Buckles. The *Chartered Accountants Act 2010* does give the Institute the right to seek costs of an appeal. After deliberation, the panel agreed that no costs would be awarded for this appeal.

DATED AT TORONTO THIS 16TH DAY OF JULY, 2012.
BY ORDER OF THE APPEAL COMMITTEE

A handwritten signature in cursive script, appearing to read "L.P. Bookman".

L.P. BOOKMAN, CA – DEPUTY CHAIR
APPEAL COMMITTEE

MEMBERS OF THE PANEL:

K.N. ARMSTRONG (PUBLIC REPRESENTATIVE)
G.R. BISSON, CA
J.C. BLACKWELL, CA
P.A. GOGGINS, CA

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **BRIAN BUCKLES**, a suspended member of the Institute, under **Rules 201.1 and 213** of the Rules of Professional Conduct, as amended.

TO: Mr. Brian Buckles

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision Made June 24, 2009 and Order Made October 21, 2010)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on June 24, 2009, July 7, 2009, and October 21, 2010, to hear the charges brought by the Professional Conduct Committee against Mr. Brian Buckles.
2. Throughout this hearing the Professional Conduct Committee was represented by Mr. Paul Farley and Mr. Buckles was present and represented by his counsel, Mr. James Lane. Mr. Robert Peck attended the hearing as counsel to the Discipline Committee.
3. On June 24, 2009, the Professional Conduct Committee presented its case on the charges. Mr. Buckles was found guilty. The Professional Conduct Committee did not call evidence with respect to sanction. Mr. Buckles testified with respect to sanction and at the conclusion of his evidence the hearing adjourned to July 7, 2009.
4. On July 7, 2009, the panel heard the submissions of both the Professional Conduct Committee and Mr. Buckles with respect to sanction. The panel made an interim order.
5. On October 21, 2010, the hearing reconvened. Mr. Lane called Dr. Heather Badalato, an Addictive Medicine Consultant at the Center for Addiction and Mental Health (CAMH). Both Mr. Farley and Mr. Lane made submissions with respect to sanction. After deliberation the panel made its order. The formal Decision and Order was sent to the parties on November 24, 2010. These Reasons given in writing pursuant to Bylaw 574 include the charges, the decision made on June 24, 2009, the interim order made on July 7, 2009 and the order made on October 21, 2010.

The charges

6. On June 24, 2009, the charges, dated February 12, 2009, were marked as Exhibit 2 to the hearing. Mr. Buckles entered a plea of guilty to all three charges. He confirmed that he understood that on the basis of his plea of guilty, and on that basis alone, he could be found guilty.
7. The charges made against Mr. Buckles, on February 12, 2009, read as follows:
 1. THAT, the said Brian Buckles, on or about the 9th day of October

2007, was convicted of Criminal Code of Canada offences as set out in Schedule "A" attached to this charge and Controlled Drugs and Substances Act offences as set out in Schedule "B" attached to this charge and did thereby fail to act 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.

2. THAT, the said Brian Buckles, on or about the 24th day of July 2008, was convicted of a Criminal Code of Canada offence as set out in Schedule "C" attached to this charge and did thereby fail to act 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.
3. THAT, the said Brian Buckles, on or about the 22nd day of November, 2006 associated himself with unlawful activity as described in counts one and six in the Information attached as Schedule "A" to this charge and in counts one, three and four in the Information attached as Schedule "B" to this charge and in the single count in the information attached as Schedule "C" to this charge, contrary to Rule 213 of the Rules of Professional Conduct.

The case for the Professional Conduct Committee

8. Mr. Farley made an opening statement on behalf of the Professional Conduct Committee. He filed a Document Brief (Exhibit 3) and a Supplementary Document Brief (Exhibit 4). He explained that the prosecution would rely on the documents set out in the Document Briefs and would not call *viva voce* evidence.

9. Exhibit 3 consisted of copies of the information laid against Mr. Buckles and his co-accused, Ms. Redden, the notations and endorsements of the court and copies of the transcripts of the proceedings before Justice Takach of the Ontario Court of Justice on October 9, 2007, and on July 24, 2008. Exhibit 4 consisted of press clippings from the *Hamilton Spectator* from November 24, 25 and 27, 2006 and January 3, 2007.

10. Mr. Farley summarized the conduct giving rise to the charges making reference to the documents, particularly the transcripts of the proceedings before the Ontario Court of Justice on October 9, 2007 and July 24, 2008.

11. Mr. Lane did not call any evidence with respect to the charges. He advised that Mr. Buckles accepted as accurate Mr. Farley's summary of the relevant facts. Mr. Buckles raised only one point of disagreement. He acknowledged pleading guilty to possession of oxycodone for the purpose of trafficking but said that he did not traffic in oxycodone and only entered the plea in the criminal proceedings on the advice of counsel.

12. Mr. Farley made his submissions and in doing so filed a schedule to the *Controlled Drugs and Substances Act* (Exhibit 5) and a Brief of Authorities (Exhibit 6).

13. Mr. Farley submitted that the uncontested evidence, the acknowledged convictions for the drugs and weapons offences (Mr. Buckles' criminal activity) together with the resulting publicity in the *Hamilton Spectator*, proved the three charges and that

Mr. Buckles was guilty of professional misconduct.

14. Mr. Farley submitted that the opprobrium which society holds for those convicted of weapons and drug offences was apparent from the fact that those convicted of such offences could, and in the case of the weapons offences would, be sent to jail. He advised that the Criminal Code imposed a minimum term of incarceration of one year and a maximum of 10 years for the weapons offences. He also advised that a conviction for trafficking in drugs could result in imprisonment, including imprisonment for life.

15. Mr. Lane said only that the evidence supported a finding of guilt on the three charges.

The Decision on the Charges

16. After deliberating the panel found Mr. Buckles guilty of the three charges. The formal written decision and order sent to the parties on November 24, 2010, set out the decision as follows:

THAT having heard the plea of guilty to the charges, and having seen and considered the evidence, the Discipline Committee finds Brian Buckles guilty of the charges.

Reasons for Decision

17. There was no dispute about the evidence or relevant facts. Mr. Buckles had a marijuana grow operation in his residence. When the police uncovered it and searched the premises they found: \$20,000 in cash; packaged marijuana in a refrigerator with a value of \$20,000; and numerous items used for drugs and drug distribution including oxycodone. The police also found illegal weapons, including: a Smith & Wesson revolver and ammunition; a Ruger revolver which had been stolen and ammunition; brass knuckles and a push knife.

18. On October 9, 2007, Mr. Buckles entered a plea of guilty to and was convicted of the unlawful possession of a prohibited firearm with readily accessible ammunition (Smith & Wesson revolver) contrary to section 95(1) of the Criminal Code, and the possession of a prohibited weapon (brass knuckles) contrary to section 91(2) of the Criminal Code.

19. On October 9, 2007, Mr. Buckles entered a plea of guilty to and was convicted of the possession of more than 1.915 kilograms of cannabis marijuana for the purpose of trafficking; and of the possession of less than 34 pills of oxycodone contrary to the *Controlled Drugs and Substances Act*.

20. On July 24, 2008, Mr. Buckles entered a plea of guilty to and was convicted of the possession of a prohibited firearm (Ruger revolver) with readily accessible ammunition without authorization contrary to section 95(1) of the Criminal Code; and possession of oxycodone for the purpose of trafficking contrary to the *Controlled Drugs and Substances Act*. The appearance on July 24, 2008, was to correct certain errors and omissions in the information and proceedings on October 9, 2007.

21. Ms. Bonnie Redden, Mr. Buckles' girlfriend, was jointly charged with him in November 2006. Prior to October 9, 2007, the charges against her were dropped as were many of the charges against Mr. Buckles.

22. The newspaper stories identified Mr. Buckles as a chartered accountant who remained active and in good standing as a member of the Institute at the time of his arrest. The press reports made it clear the Mr. Buckles faced serious weapons and drug charges after a raid on his residence turned up a large cache of street drugs and two handguns.

23. The panel found the relevant facts, which are set out in the preceding six paragraphs, proved that Mr. Buckles was guilty of the three charges. He had engaged in criminal conduct of such a nature that he failed to maintain the good reputation of the profession and its ability to serve the public interest. His conduct constituted professional misconduct and accordingly he was found guilty of the three charges.

SANCTION

24. The Professional Conduct Committee did not call additional evidence with respect to sanction.

25. Mr. Buckles testified and during his testimony Mr. Lane filed a Document Brief (Exhibit 7) which included: the Pre-Sentence Report of December 3, 2007; reference letters; an 11 page letter from Dr. Thomas Gleeson, Mr. Buckles' family physician, dated December 13, 2007; and an attending physician's report by Dr. Gleeson to SunLife Financial dated March 16, 2006. Mr. Farley cross-examined Mr. Buckles.

Mr. Buckle's evidence

26. Mr. Buckles received his CA designation in 2003. He became a mortgage specialist in 2005 and he ultimately obtained a real estate license. In September 2004, he accepted a position with KPMG and worked on the Nortel file until January 2005 when he experienced severe chest pain. This came as a shock to Mr. Buckles. He had maintained a rigorous fitness routine in part because there was a history of heart problems in his family. He was hospitalized, his heart issues were examined and ultimately he was put on medication including oxycodone. Mr. Buckles developed anxiety and depression which was said to be secondary to his cardiac dysfunction and fear of impending cardiac consequences.

27. Dr. Gleeson managed Mr. Buckles' medication and treatment until April 2006 when Dr. Gleeson became ill. Thereafter, Mr. Buckles managed his own medication with disastrous results. He became addicted to oxycodone. He also used marijuana regularly. He obtained these drugs from the street. The cost of the street drugs reached approximately \$100 a day and Mr. Buckles turned to growing marijuana, both for his own use and to sell so that he could purchase other drugs.

28. Mr. Buckles' testimony with respect to handguns was at best confusing. Mr. Buckles said he had obtained a certificate and purchased a rifle for hunting. He acknowledged that he did not have a certificate for the acquisition of handguns and that he knew continued possession of handguns was illegal but he seemed to be under the impression that it was legal to acquire them in the first place. He testified that he kept the handguns and ammunition in a locked leather case.

29. Mr. Buckles also testified that he joined a martial arts gym in Hamilton which was open to members of the public. He was a senior black belt apprentice and he used the brass knuckles at the club and kept them in his gym bag. He said he knew it was illegal

to use brass knuckles on the street but he did not know it was illegal to own them.

30. Mr. Buckles was on short term and then long term disability following his heart problems in 2005. He testified that from and after the middle of 2008 he had three sources of income. He managed seven properties which he and other people owned. Included in his managing duties was bookkeeping and the collection of rent from students who rented rooms in the properties. He supervised the operation of a chip truck which had four employees. He was involved, to some degree, in real estate and did small contracting jobs. His evidence was that he spent about 40 hours a week from and after the middle of 2008 on these three business activities. He had not done accounting work in the sense of signing off on statements or information since his work with KPMG which ended in January 2005 with his heart problems. He did not renew his licence to practice public accounting when it expired in 2004.

31. Mr. Buckles testified that the \$20,000 the police found in his residence was mainly money for rent which he had collected on behalf of the owners of the seven properties. He acknowledged that the police still had the \$20,000 but said that they had accepted that \$17,000 was actually money received for rent.

32. Mr. Buckles testified that he had not taken drugs since the time of his arrest. He had completed a relapse prevention program at Alcohol, Drug and Gambling Services in Hamilton in June 2008. He was confident that he understood the temptations he would face and would be able to resist taking drugs in the future. He was not under the care of a doctor. He said that he was willing to commence a monitoring program which could provide reasonable assurance that he had not relapsed but he had not done so at the time of the hearing.

33. Mr. Buckles admitted that he knew it was wrong to buy illegal drugs and that if he was caught there could be criminal consequences. He also admitted that the handguns were not stored safely and he knew that illegal possession of firearms was a serious matter which could have criminal consequences.

34. Mr. Buckles accepted that his criminal activities had breached the trust of the profession but denied that he had breached the trust of any specific person. He acknowledged that he had made mistakes but he refused to accept the prosecution's suggestion that his conduct was more than a matter of mistakes. He said that he now understood the triggers which caused him to make poor choices, which he identified as buying drugs off the street, self-medicating and growing marijuana to pay for his drug habit.

35. Mr. Buckles testified that his designation was important to him and that he had not used it since his arrest out of respect for the profession. However, he wanted to retain the designation and use it when the criminal matters had been resolved. He said that the designation was particularly useful to him in his role as a property manager as it enabled him to build trust with bankers and investors.

36. Mr. Buckles said in answer to questions from the panel that he had purchased the handguns from a private source and did not know one of the guns had been stolen. Also, in response to a question from the panel he advised that he had been in custody for three days when he was arrested and that he knew when he returned to court for his sentencing, on July 21, 2009, that it was possible that he could be incarcerated;

however, he thought there were other options and he was hopeful of receiving a conditional sentence.

The Professional Conduct Committee's submissions

37. Mr. Farley advised the panel that the Professional Conduct Committee sought an order which included: a reprimand; a fine of \$5,000; expulsion; the usual order with respect to notice or publicity including a notice to be published in the *Hamilton Spectator*; and costs in the amount of \$9,000.

38. It was the position of the Professional Conduct Committee that the principle of sanction which was most important in this case was general deterrence. The order, in the view of the Professional Conduct Committee, should provide for expulsion as a warning to other members of the profession that misconduct similar to Mr. Buckles would not be tolerated.

39. Mr. Farley recognized that the position of the member was that his misconduct resulted from his addiction and as it was possible to provide reasonable assurance that he will not again succumb to the use of drugs it would be safe for both the profession and the public for Mr. Buckles to maintain his designation.

40. Mr. Farley asked the panel to carefully scrutinize Mr. Buckles' explanation for his misconduct. He pointed out that Mr. Buckles acquired prohibited weapons prior to his medical condition, the medication and his subsequent addiction. Accordingly, it followed that possession of these weapons could not be attributed to an addiction.

41. Mr. Farley submitted that his misconduct was not a one-time event, the result of a bad decision or mistake. Mr. Buckles had a number of months to plan and implement the marijuana grow operation and he had ample time to reflect on what he was doing. He possessed the illegal weapons for many months.

42. Mr. Farley submitted that Mr. Buckles was a member of a profession which was noted for its trustworthiness and integrity, that Mr. Buckles' conduct fell far short of the required standard and that he had breached the trust of the profession and he should be held accountable.

43. Mr. Farley filed a Brief of Authorities (Exhibit 6) which included, in addition to relevant provisions of the Criminal Code and the *Controlled Drugs and Substances Act*, the decisions of the Discipline Committee in: *Chu* (1999); *Gourlay* (1996); *Donahoe* (1994); *Medhurst* (2000); *Marcus* (2009); and *Ng* (1996) as well as the case of *Pugliese v. British Columbia* (2008). Mr. Farley also filed copies of the decisions of the Discipline Committee in *Rapier* (1997); *Platis* (1998) and the decisions of the Discipline and Appeal Committees in *Gary* (2000) (Exhibits 9, 10 and 11).

44. Mr. Farley reviewed the convictions for the weapons and drugs which included an acknowledgement by Mr. Buckles that he had possession of oxycodone for the purpose of trafficking. It was the Professional Conduct Committee's position that Mr. Buckles was not permitted, as a matter of law, to back away from the admission which he made in the criminal proceedings with respect to trafficking in oxycodone. Mr. Farley made specific reference to the decisions in *Rapier* and *Platis*, emphasizing that both rejected exculpatory explanations offered by the member to the Discipline Committee concerning admissions made in court proceedings.

45. Mr. Farley anticipated a submission that punishment should not be meted out to Mr. Buckles because he suffered from an illness. He contrasted Mr. Buckles' conduct and the facts of this case with the conduct of Mr. Gary and the facts in that case. He pointed out that Mr. Gary's misconduct did not involve a criminal conviction and further that there was a causal connection between Mr. Gary's addiction and his misconduct which was in marked contrast to Mr. Buckles' possession of prohibited weapons.

46. Mr. Farley made specific reference to the cases of *Chu*, *Gourlay*, *Donahoe*, *Medhurst*, *Marcus* and *Ng*, all in support of the requested sanction of expulsion even where there was evidence that the misconduct resulted from depression or an illness. It was the position of the Professional Conduct Committee that the protection of the public was paramount and should prevail even if there was a view that the member could be rehabilitated.

47. Finally, Mr. Farley pointed out that pursuant to Bylaw 353, if Mr. Buckles was expelled, he would be able to apply for readmission to the Institute and gain readmission if he was able to show that he had been rehabilitated. Mr. Farley made reference to a number of cases where a member had been readmitted when they were able to demonstrate to the Discipline Committee that they met the criteria for readmission set out in the bylaws.

48. Mr. Farley submitted that as it was virtually certain that Mr. Buckles would be incarcerated because of his conviction on a weapons offence, which carried a minimum term of one year, that expulsion with a subsequent application for readmission on the basis that Mr. Buckles had been rehabilitated was a better process to follow than allowing Mr. Buckles to remain a member of the Institute while he was incarcerated.

49. Mr. Farley submitted that if Mr. Buckles had been serious about demonstrating a willingness to enter into a monitoring program he would have done so prior to the proceedings before the Discipline Committee.

50. Mr. Farley filed a Cost Outline (Exhibit 12) which indicated that the costs of the proceedings, as of that date, were \$17,073.35 which substantially exceeded the \$9,000 sought by the Professional Conduct Committee.

The member's submissions

51. Mr. Lane filed a Brief of Authorities (Exhibit 13) which included two decisions of the ICAO, *Gary* (1999) and *Ganza* (2003); the decision of the Law Society of British Columbia re *Watt*; the decisions of the Law Society of Upper Canada re *Mills* and re *Korb*; the decision of the Ontario College of Pharmacists re *Shihora* and the decision of the Ontario College of Chiropractors re *Markis*. The Brief of Authorities also contained a schedule to the Health Professions Procedural Code and excerpts for the physical health program website of the Ontario Medical Association.

52. Mr. Lane submitted that it was clear, that insofar as the law was concerned, an addiction was a disability and that there was a duty to accommodate Mr. Buckles' disability which the panel could do and at the same time adequately ensure the public would be protected.

53. Mr. Lane emphasized that Mr. Buckles' misconduct was not in his capacity as a

chartered accountant. He submitted this was a very different case than one where the chartered accountant's actions, as a chartered accountant, had caused harm to a member of the public, such as a client or employer. He submitted in these circumstances it was appropriate to leave the issue of general deterrence to the criminal courts and if the public could be protected and the profession provided reasonable assurance that the member would not engage in the misconduct in the future, that the principle of rehabilitation should be given priority.

54. Mr. Lane referred to the cases in his Brief of Authorities, particularly the cases *Watt, Mills*, and *Korb*, as support for his submissions. He pointed out that in those cases the focus of the sanction had been directed to minimize the possibility of future substance abuse.

55. Mr. Lane acknowledged that since Mr. Buckles had prohibited weapons the criminal charges and the charges brought by the Professional Conduct Committee were justified, but he submitted that this was not a case involving a hardened criminal. He said that the weapons offences were isolated and were not indicative of what Mr. Buckles was like prior to his addiction. Mr. Lane pointed out that Mr. Buckles had two medical problems: one was his cardiac condition and the other, the addiction, was a mental health problem. He said Mr. Buckles needed understanding and requested support and the proposed expulsion, the greatest penalty the panel could impose, "was akin to kicking him to the side of the road when he is found in need".

56. Mr. Lane submitted that there was objective evidence which supported the view that Mr. Buckles was a different person after the medical treatment and drug addiction than he was prior to it. He pointed to the letter of Dr. Gleeson and even the statements of the neighbours referred to in the press reports in the *Hamilton Spectator* in support of this submission. Mr. Lane also asserted that Mr. Buckles' good behavior was interrupted by the medical crisis and resulting drug addiction. He submitted that Mr. Buckles had been fully open and honest in his evidence and that the panel had seen the full extent of his misconduct for which he took responsibility.

57. Mr. Lane submitted that it was also relevant that Mr. Buckles' doctor had prescribed a highly addictive drug and then been unable to monitor its use, and that Mr. Buckles had overcome the addiction, undergoing a cold withdrawal when he was arrested and he had not taken drugs since the time of his arrest.

58. Mr. Lane noted that the *Gary* case involved misappropriation of funds from a client, a breach of the client's trust which the Institute simply does not tolerate. The conduct in *Gary*, in Mr. Lane's submission, was inimical to the public trust, demonstrated a lack of integrity and so undermined the reputation of the profession that such conduct, in other cases, required expulsion. Yet the Discipline Committee and the Appeal Committee had concluded the monitoring program would protect the public, the profession and ensure Mr. Gary had been rehabilitated. He submitted that the principle set out in *Gary* was the one the panel should follow in this case.

59. Mr. Lane submitted that Mr. Buckles' willingness to enter into a monitoring program, combined with the fact that he had overcome the addiction and had not used drugs since the time of his arrest, should give the panel confidence that the public would not be harmed and that Mr. Buckles would not again engage in the misconduct.

Deliberations of July 7, 2009

60. At the conclusion of the submissions on July 7, 2009, the panel reached a number of conclusions but did not make a final determination with respect to the sanction to be imposed on Mr. Buckles. The panel is grateful to counsel for both parties who in their submissions set out the aggravating and mitigating factors in this case.

61. The panel was aware that it was to keep in mind each of the three general principles of sanction, specific deterrence, general deterrence and rehabilitation. The panel accepted that the range of appropriate sanction in this case could include expulsion, however, the panel did not think that the misconduct in and of itself required expulsion from membership.

62. Mr. Buckles did not misconduct himself while carrying out his duties as a chartered accountant. This was not a case where a chartered accountant took advantage of the trust reposed in him or her because of the designation and stole money or took advantage of a client or employer.

63. It was known at the time of his arrest that he was a chartered accountant. This did damage the good reputation of the profession and accordingly its ability to serve the public interest. The misconduct was serious and wrong but it did not involve a breach of trust reposed in him because of the designation.

64. The criminal justice system provides both general deterrence and specific deterrence for misconduct such as Mr. Buckles. The panel had some difficulty seeing how a further sanction from the Discipline Committee would enhance general or specific deterrence given the prospect of incarceration, which Mr. Farley asserted was a certainty particularly for the weapons offences.

65. The panel did not think that Mr. Buckles was a hardened criminal. The panel recognized that the possession of weapons was a serious offense, but there was no evidence that he had ever used the weapons or caused physical harm to anyone. The panel recognized that the possession of illegal drugs was a serious offence but concluded that the reason for the possession of drugs was the underlying addiction.

66. The panel also thought that the discipline process should recognize that there were alternatives to expulsion when the misconduct of the member had not caused harm to employers, clients or members of the public and when the underlying cause for the misconduct was an illness, such as addiction as in this case. This approach had been accepted not just by the Law Societies of Ontario (*LSUC v. Mills*) and British Columbia (*LSBC v. Watt*) but also by the Institute itself in the *Gary* case.

67. The panel was aware that if Mr. Buckles was expelled he would have the opportunity to apply for readmission and if he could demonstrate, at a later date, that he had been rehabilitated, he could be readmitted. The difficulty the panel had with this approach was that it would be putting an issue over to another panel of the Discipline Committee which this panel thought it should decide.

68. The panel concluded that Mr. Buckles was a young man who wanted to turn his life around and had shown considerable success in doing so. He had not been able to control his craving for drugs but following his arrest and three day incarceration he had abstained from further use of illegal drugs, albeit under the scrutiny of the criminal

process. He enjoyed the support of his girlfriend, her family, his own family and his business associates. He had cooperated with the police and he had received a positive pre-sentence report from the Ontario Ministry of Community Safety and Correctional Services. He also cooperated with the Professional Conduct Committee and was remorseful for his behaviour.

69. The panel concluded that, as Mr. Buckles had not misconducted himself in his capacity as a chartered accountant, had started the process of rehabilitation and no client, employer or member of the public had been harmed, it was prepared to consider an alternative to expulsion, provided Mr. Buckles could call evidence to establish that:

- a) there was a suitable drug monitoring program which would detect a recurrence of the illegal use of drugs;
- b) the program included appropriate treatment if there was a recurrence;
- c) the program would provide reasonable assurance that the public would be protected;
- d) Mr. Buckles was an appropriate candidate for such a monitoring program; and
- e) under the program Mr. Buckles would complete his rehabilitation.

70. The panel thought the appropriate thing to do was adjourn the proceedings to allow Mr. Buckles the opportunity to present evidence which would address these issues. It appeared that the question of whether or not Mr. Buckles would be incarcerated would be resolved before the hearing resumed. The panel also thought that Mr. Buckles, who had in effect voluntarily suspended himself from the time of the arrest until these proceedings, should be suspended during the period of adjournment. There was discussion on the record about the jurisdiction to suspend him and ultimately the panel concluded that as the parties would agree to an adjournment on the condition that Mr. Buckles be suspended, that he would be suspended until there was a further order of the Discipline Committee.

71. The panel was concerned about the length of the adjournment and the possible impact that incarceration would have on Mr. Buckles' ability to obtain the medical evidence required. Accordingly the panel made the following order.

IT IS ORDERED in respect of the charges:

- 1. THAT this hearing be and is adjourned *sine die* to be brought back before the panel on one month's notice, provided that such notice is not to be given until after receipt by Mr. Buckles of a report from the Centre for Addiction and Mental Health (CAMH) or the expiry of four months from the date of this order, whichever event occurs first.
- 1. THAT Mr. Buckles' membership in the Institute of Chartered Accountants of Ontario be and is hereby suspended and shall remain suspended until and unless the Discipline Committee

orders otherwise.

October 21, 2010

72. It turned out that Mr. Buckles was incarcerated and was not able to obtain a report from CAMH until June 2010. In the result, the hearing resumed on October 21, 2010, at which time Mr. Lane called Dr. Heather Badalato, a Staff Addiction Medical Consultant at CAMH. Her *curriculum vita* and report of June 8, 2010 was marked as Exhibit 15. Dr. Badalato was accepted as an expert entitled to give opinion evidence with respect to drug monitoring programs and addiction.

73. Dr. Badalato had interviewed Mr. Buckles twice. She acknowledged that she had made an assessment, based largely on what Mr. Buckles himself told her. Her formal diagnosis was that Mr. Buckles had a poly-substance dependence and that he was high risk individual, i.e. one who was not certain or destined to repeat his misuse of drugs but one who needed to be monitored to minimize the risk that he would do so.

74. Dr. Badalato made recommendations with respect to the kind of monitoring program which would be suitable for Mr. Buckles. She said it should be an intensive monitoring program under the supervision of an addiction physician which should involve random testing for drugs. Further, because of the risk that Mr. Buckles could reuse drugs, the addiction physician should have the authority to require an in-patient assessment and prescribe subsequent treatment if necessary.

75. Dr. Badalato said that Mr. Buckles suffered from a relapsing remitting condition and that there was no guarantee that the monitoring program would be successful. However, she also expressed the view that she was fairly certain that an appropriate monitoring program would detect any use of illegal drugs at an early stage and that an appropriate treatment for Mr. Buckles would be successful.

76. When cross-examined, she reiterated her view that it was not possible to put a percentage likelihood of success, that by definition an addict was always capable of relapsing. She also testified that with an appropriate monitoring program the addiction physician would be in a good position to recognize signs of problems and accordingly the possibility or requiring in-patient treatment was an important aspect of the monitoring program.

77. Dr. Badalato testified that the risk of reuse of illegal drugs reduced over time and was significantly reduced after five years on a monitoring program.

78. Dr. Badalato answered questions from the panel with respect to the kind of support which is generally available, including Narcotics Anonymous. She stressed that each case depends on the individual, that not everyone can relate to a 12-step program, that the addiction physician would know of appropriate programs, and that the success of the monitoring program depended on the therapeutic relationship Mr. Buckles would have with the addiction physician.

79. At the conclusion of Dr. Badalato's evidence both counsel referred to and summarized their earlier submissions. Mr. Lane submitted that it was clear from Dr. Badalato's evidence that while there was a risk of recidivism, the problem could be managed with a structured program of monitoring.

80. Both counsel referred to a number of cases, including and in particular Gary. Mr. Farley emphasized that Mr. Buckles had had many months to put a monitoring program in place but had not done so and that pursuant to the bylaws after expulsion he would have the opportunity, at some reasonable time in the future, to persuade a Discipline Committee that he was no longer a risk.

81. Mr. Lane emphasized that Mr. Buckles did not misconduct himself as a chartered accountant, as Mr. Gary had, and Mr. Buckles had demonstrated over the past many months that he could refrain from illegal use of drugs and that the evidence supported his request that he be allowed to continue as a member subject to a reasonably strict monitoring program.

82. After hearing the submissions of the counsel, the panel deliberated and made the following order.

IT IS ORDERED in respect of the charges:

1. THAT Mr. Buckles be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Buckles be and he is hereby fined the sum of \$5,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Buckles continues to be suspended from the rights and privileges of membership in the Institute until November 18, 2010.
4. THAT Mr. Buckles engage an addiction physician who shall conduct an appropriate intensive monitoring program that will include urine drug screening and regular follow-up for a period of five (5) years. The results of the drug screens are to be provided to the Director of Standards Enforcement on a quarter-yearly basis. This program is to commence no later than December 1, 2010. If, in the opinion of the attending addiction physician, there is an increase in the risk that Mr. Buckles will relapse, Mr. Buckles shall submit to an immediate in-patient assessment and treatment as deemed necessary by the attending physician. The arrangement Mr. Buckles makes with the addiction physician shall authorize and direct the physician to immediately report to the Director of Standards Enforcement any non-compliant event, including the failure of Mr. Buckles to comply with any in-patient assessment and treatment deemed necessary. Events of non-compliance shall result in the immediate suspension of Mr. Buckles.
5. THAT notice of this Decision and Order, disclosing Mr. Buckles'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.

IT IS FURTHER ORDERED:

- 6. THAT Mr. Buckles be and he is hereby charged costs fixed at \$5,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.

AND IT IS FURTHER ORDERED:

- 7. THAT in the event Mr. Buckles fails to comply with any of the requirements of this Order, he shall be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three (3) month period, he shall be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in *The Hamilton Spectator*. All costs associated with the publication shall be borne by Mr. Buckles and shall be in addition to any other costs ordered by the committee.

Reasons for the Order - Rehabilitation or Expulsion

83. It is clear from what is set out above under the heading "Deliberations of July 7, 2009" that the most important issue the panel had to determine was whether Mr. Buckles should be expelled, or whether the principle of rehabilitation should be given priority. The panel was prepared to consider giving priority to the principle of rehabilitation only if Mr. Buckles could present evidence of the availability of an appropriate drug monitoring program and that he was a suitable candidate for such a program.

84. The panel accepted Dr. Badalato's evidence that there was an appropriate monitoring program which would detect any further use of illegal drugs by Mr. Buckles, and in addition early detection and a provision for immediate in-patient assessment and treatment would provide reasonable assurance that the misconduct which resulted in the criminal charges and the charges of professional misconduct would not be repeated.

85. The panel also concluded that Mr. Buckles was a good candidate for such a monitoring program. He had remained free of illegal drug use, he still enjoyed the support of his family, and Dr. Badalato was satisfied that he was an appropriate candidate, albeit he was a high risk candidate.

86. The panel was persuaded that the principle established in *Gary*, and in such cases as *The Law Society of Upper Canada* case involving Mr. Mills was the appropriate principle to follow in this case. Mr. Buckles suffered from a disability, a craving for drugs which were initially prescribed for him to deal with the cardiac pain he experienced. It was relevant to the panel that Mr. Buckles' addiction to drugs began with the use of prescribed drugs, which use got out of control when Mr. Buckles' physician was no longer able to supervise his treatment.

87. It was relevant to the panel that the monitoring program provides reasonable assurance of early detection and appropriate treatment in the event of a recurrence of illegal drug use. In this sense the public, the profession and Mr. Buckles are better protected than they would be if Mr. Buckles were expelled in which case there would be no monitoring program.

88. General and specific deterrence are principles to be considered when imposing a sanction. The panel did not think that chartered accountants generally need to be deterred from weapons or drug offences or that the possibility of expulsion from membership for such offences would add materially to the general deterrent effect of a criminal conviction and likely incarceration for such offences. In terms of specific deterrence, Mr. Buckles surely knows that a repetition of either a weapons or drug offence will result in a significant period of incarceration and expulsion from membership. Further, as is set out above, we think it is likely the monitoring program will help Mr. Buckles' rehabilitation and thus minimize the possibility of repeated misconduct.

89. The panel accepted Dr. Badalato's evidence that a five-year period for monitoring the illegal use of drugs was appropriate and that the risk of such use diminished over time and that five years was an appropriate cutoff date for the monitoring program.

Reprimand

90. The panel ordered a reprimand to stress to Mr. Buckles that his conduct was unacceptable.

Suspension

91. Mr. Buckles was scheduled to be released from a halfway house on November 18, 2010. The panel concluded this was an appropriate date to terminate his interim suspension.

92. The order provides that Mr. Buckles will be suspended in the event he fails to comply with the monitoring program and notice will be given to the Director of Standards Enforcement of a failure to comply. Mr. Buckles should not be under any illusion. He is being given a chance to rehabilitate himself. If he fails to do so he should not expect to remain a member in good standing.

Fine

93. The fine of \$5,000, which given Mr. Buckles' circumstances is significant, was imposed as a general and specific deterrent.

Publication

94. It is a well established principle of the discipline process that publicity is a significant, often the most significant, specific and general deterrent which a panel can impose. The knowledge that a member found guilty of misconduct will have his or her name published is a significant deterrent for a professional whose reputation is one of, if not the most, significant asset he or she has. Mr. Buckles' arrest, the charges and criminal proceedings were the subject of stories in the *Hamilton Spectator*. Accordingly, the notice given disclosing Mr. Buckles' name should be published in the *Hamilton Spectator* as well as on the Institute website and in *CheckMark*. The wider the publicity the greater the deterrent effect. Also, it is important that the public know the Institute takes its regulatory role seriously and will not condone such misconduct.

Costs

95. The principle that the member whose misconduct is responsible for the expense of the investigation and prosecution should indemnify the institute, in whole or in part, for those costs is well established. The Costs Outline filed by the Professional Conduct Committee indicated the costs of the investigation, prosecution and hearing were \$17,073.35. The prosecution requested a partial indemnity in the amount of \$9,000. The panel concluded that the appropriate recovery of costs in this case would be \$5,000 and that Mr. Buckles should have 12 months in which to pay those costs.

DATED AT TORONTO THIS *28TH* DAY OF JUNE, 2011
BY ORDER OF THE DISCIPLINE COMMITTEE



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

MEMBERS OF THE PANEL:

C. DANCHUK, CA
G. KROFCHICK, CA
B.M. SOLWAY (PUBLIC REPRESENTATIVE)