

## **Brain Edgar Gibbs: Summary, as Published in *CheckMark***

**Brian Edgar Gibbs**, of Thornhill, was found guilty by the discipline committee of a charge of professional misconduct, laid by the professional conduct committee, under Rule of Professional Conduct 104, of failing to promptly reply in writing to a letter from the Institute, in respect of a matter of professional conduct, in which a written reply was specifically required.

The committee ordered that Mr. Gibbs

- be reprimanded in writing by the chair of the hearing;
- be fined \$5,000, to be paid within a specified time; and
- be expelled from membership in the Institute.

Mr. Gibbs appealed the discipline committee's decision and order to the appeal committee, which confirmed the decision and order and dismissed the appeal.

## **CHARGE(S) LAID re Brian Edgar Gibbs**

The Professional Conduct Committee hereby makes the following charge against Brian E. Gibbs, CA, a member of the Institute:

1. THAT, the said Brian E. Gibbs, failed to promptly reply in writing to a letter from the Institute, in respect of a matter of professional conduct, signed by the associate director of standards enforcement and dated and sent November 21, 1990, in which a reply was specifically requested, contrary to Rule 104 of the rules of professional conduct.

DATED at Toronto this 23<sup>rd</sup> day of January 1991

R.G. LONG, CA -CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

## **DISCIPLINE COMMITTEE re Brain Edgar Gibbs**

**DECISION AND ORDER IN THE MATTER OF:** A charge against BRIAN EDGAR GIBBS, CA, a member of the Institute, under Rule 104 of the Rules of Professional Conduct, as amended.

### **DECISION AND ORDER MADE APRIL 10, 1991**

#### **DECISION**

THAT, having seen and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Brian Edgar Gibbs, pursuant to Institute Bylaw 87(d), being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to the charge, THE DISCIPLINE COMMITTEE FINDS Brian Edgar Gibbs guilty of the charge.

#### **ORDER**

IT IS ORDERED in respect of the charge:

1. THAT Mr. Gibbs be reprimanded in writing by the chairman of the hearing.
2. THAT Mr. Gibbs be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within sixty (60) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Gibbs be and he is hereby expelled from membership in the Institute.
4. THAT Mr. Gibbs reply to the letter from the associate director of standards enforcement, dated October 16, 1990.
5. THAT notice of this Decision and Order, disclosing Mr. Gibbs' 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;
  - (c) to the Canadian Institute of Chartered Accountants; and
  - (d) to the local newspapers in the area in which the member practices.

DATED AT TORONTO, THIS 17TH DAY OF APRIL, 1991  
BY ORDER OF THE DISCIPLINE COMMITTEE

B.W. STEPHENSON, BA, LLB  
SECRETARY - THE DISCIPLINE COMMITTEE

## **DISCIPLINE COMMITTEE re Brain Edgar Gibbs**

**REASON FOR THE DECISION AND ORDER IN THE MATTER OF:** A charge against BRIAN EDGAR GIBBS, CA, a member of the Institute, under Rule 104 of the Rules of Professional Conduct, as amended.

### **WRITTEN REASONS FOR THE DECISION AND ORDER MADE APRIL 10, 1991**

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on April 10, 1991.

Mr. Paul Farley attended on behalf of the professional conduct committee. Mr. Gibbs was not present.

The discipline committee received the affidavits of service of the Notice of Assignment Hearing and the Notice of Hearing (Exhibits 1 and 2). The committee was satisfied that Mr. Gibbs had proper notice of the hearing and determined to proceed with the hearing in his absence, pursuant to Institute Bylaw 87(d). Prior to proceeding, the secretary to the discipline committee had Mr. Gibbs' name paged twice within Institute premises, to which no response was made.

A plea of not guilty was then entered on behalf of Mr. Gibbs to the charge laid against him.

After hearing the submissions made by Mr. Farley, and after reviewing the documentation filed by the professional conduct committee, the discipline committee, upon deliberation, found Mr. Gibbs guilty of the charge laid against him.

The affidavit of Jo-Anne Olafson, CA, associate director of standards enforcement for the Institute, and the supporting document brief, provided clear evidence that, as a result of Mr. Gibbs' failure to promptly reply in writing to letters from the Institute, the professional conduct committee had been unable to deal with a written complaint against the member received October 11, 1990.

After making its finding of guilty on the charge, the discipline committee heard the submissions of the professional conduct committee with respect to sanction and, upon deliberation, made the following order:

### **ORDER**

IT IS ORDERED in respect of the charge:

1. THAT Mr. Gibbs be reprimanded in writing by the chairman of the hearing.
2. THAT Mr. Gibbs be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within sixty (60) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Gibbs be and he is hereby expelled from membership in the Institute.

4. THAT Mr. Gibbs reply to the letter from the associate director of standards enforcement, dated October 16, 1990.
5. THAT notice of this Decision and Order, disclosing Mr. Gibbs' 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;
  - (c) to the Canadian Institute of Chartered Accountants; and
  - (d) to the local newspapers in the area in which the member practices.

Based upon the evidence presented by the professional conduct committee, and the member's failure to appear at both the assignment hearing and the hearing, the committee is compelled to conclude that Mr. Gibbs refuses to abide by the rules and regulations of the Institute. As a result, the committee has no alternative but to order his expulsion from membership.

The committee is of the view that a written reprimand is necessary to stress to the member the unacceptability of his conduct as a chartered accountant.

The committee also believes that this case calls for the imposition of a fine in the amount of \$5,000. This fine is looked upon as a significant specific deterrent as well as a general deterrent to other members of the Institute.

Notice and publication of the decision and order in the manner specified, including disclosure of the member's name, is a well established practice of the discipline committee, which it follows unless a persuasive reason not to is presented. It was also the feeling of the committee that, as a further specific deterrent, publication in the local newspapers in the area in which Mr. Gibbs practised is appropriate.

While it is understood to be the usual practice of the applications committee in any event, the discipline committee nevertheless considers it important to state in these reasons its concern that, in the event this member ever applies for readmission to membership, his entire previous Institute history be reviewed by the applications committee. This is not the first time Mr. Gibbs has been before the discipline committee. Indeed, it is not even the first time he has been expelled by this committee. These facts must be brought out in any consideration of this member's readmission to the Institute.

DATED AT TORONTO, THIS 7<sup>th</sup> DAY OF AUGUST, 1991  
BY ORDER OF THE DISCIPLINE COMMITTEE

E.W. SLAVENS, FCA - CHAIRMAN  
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL

H.R. KLEIN, CA  
W.A. MOORHEAD, FCA  
R.J. NOBES, FCA  
P. RAYSON, CA

V.G. STAFL (Public Representative)

## APPEAL COMMITTEE re Brain Edgar Gibbs

**IN THE MATTER OF:** An appeal lodged by Brian Edgar Gibbs, . CA, a member of the Institute of Chartered Accountants of Ontario, against the decision and order of the discipline committee made on April 10, 1991, pursuant to the *Chartered Accountants Act* and the Bylaws pursuant to the Act; and An order of the appeal committee made on January 30, 1992.

A panel of the appeal committee met on March 25, 1992 to hear an appeal lodged by Brian Edgar Gibbs, a member of the Institute, against the decision and order of the discipline committee made on April 10, 1991.

Mr. Gibbs was in attendance and represented himself. The professional conduct committee was represented by its legal counsel, P.F. Farley.

At an appeal hearing held on January 30, 1992, Mr. Gibbs had applied for and was granted an adjournment. In granting the adjournment, the appeal committee's order stipulated the following, that

1. He (Mr. **Gibbs**) file within 10 days of receipt of the order either proof that he has requested and paid for the transcripts as required under the bylaws, or make an application under the bylaws to dispense with the requirement for filing same. (emphasis added)
2. Also, within the aforementioned time frame, to comply with the provisions of the bylaws, that he provide, in writing, the grounds for his appeal.

The order of the appeal committee, made on January 30, 1992, further required that:

In the event. that any of the above conditions are not met by the member, including his . appearance before the new appeal committee panel, this appeal will be deemed abandoned and accordingly dismissed.

At the appeal hearing of March 25, 1992, Mr. Gibbs submitted that he had not complied with the conditions of the appeal committee's order of January 30, 1992 because he had been under considerable stress. Mr. Gibbs stated that his reason for appearing at this hearing was to seek the mercy of the appeal panel with respect to his being able to retain his CA designation.

Mr. Farley submitted that Mr. Gibbs was not new to the standards enforcement processes of the Institute and his past conduct suggested a total disregard for these processes. Mr. Farley further submitted that, Mr. Gibbs is a member who had been expelled from the Institute, was readmitted and was ordered expelled again by the discipline committee.

Mr. Farley submitted that as a result of Mr. Gibbs' failure to comply with the appeal committee's Order of January 30, 1992, this panel of the appeal committee had no jurisdiction to do otherwise but dismiss the appeal. This panel was not persuaded by Mr. Farley's arguments and accepted instead, the legal advice of its own counsel, which was that this panel was not bound by the previous appeal committee's Order and could make its own decision. based on the merits of the case before it.

This panel is of the view that the conditions imposed in the appeal committee's Order made on January 30, 1992 were reasonable and not onerous. Furthermore, Mr. Gibbs could provide no satisfactory explanation as to why he could not comply with the Order. In weighing any consideration of clemency for Mr. Gibbs, this panel had to give due regard to the public interest.

The Institute's standards enforcement processes serve to protect the public interest. A member that cannot or will not abide by the standard enforcement processes of the Institute poses a risk to the public interest. Under the circumstances, and due to the conduct, or lack of it, of Mr. Gibbs, the appeal committee unanimously dismissed the appeal of Mr. Gibbs and ordered that the decision and order of the discipline committee made on April 10, 1991 be confirmed and become effective immediately.

SIGNED AT TORONTO, the 28th day of April, 1992

W.L. NAUGHTY, FCA - CHAIR OF THE HEARING

Panel members to the hearing:

W.J. Detenbeck, FCA; F.C. Hill, FCA; D.T. McClurkin, CA; J.R. Randall; D.M. Stone, CA



## **APPEAL COMMITTEE re Brain Edgar Gibbs**

**ORDER OF THE APPEAL COMMITTEE IN THE MATTER OF:** An appeal lodged by Brian Edgar Gibbs, CA, a member of the Institute of Chartered Accountants of Ontario, against the decision and order of the discipline committee made on April 10, 1991, pursuant to the *Chartered Accountants Act* and the Bylaws pursuant to the Act; and An order of the appeal committee made on January 30, 1992.

### **ORDER**

A panel of the appeal committee met on March 25, 1992 to hear an appeal lodged by Brian Edgar Gibbs, a member of the Institute, against the decision and order of the discipline committee made on April 10, 1991.

Mr. Gibbs was in attendance and represented himself. The professional conduct committee was represented by its legal counsel, P.F. Farley.

The appeal panel, after hearing the submissions of both parties, and after reviewing the documentation that was before it, made the following order verbally and advised the parties that the written reasons would follow.

It is ordered that

1. The appeal of Mr. Gibbs be dismissed.
2. The decision and order of the discipline committee made on April 10, 1991 be confirmed in its entirety.
3. The decision and order of the discipline committee made on April 10, 1991 become effective immediately.

DATED at Toronto, this 27 day of March 1992.

P.G. SCHOFIELD -SECRETARY  
APPEAL COMMITTEE