

## **Brian Russell McCraney: Summary, as Published in *CheckMark***

**Brian Russell McCraney**, of Brantford, was found guilty of one charge under Rule 104 of failing to respond to letters from the director of standards enforcement, and one charge under Rule 203.2 of failing to cooperate in an attempted inspection of his practice. He was fined \$1,000 and ordered to cooperate with practice inspection within a specified time or else be expelled from the Institute. As a result of his failure to comply with the order, Mr. McCraney was expelled.

## **CHARGE(S) LAID re Brian Russell McCraney**

The Professional Conduct Committee hereby makes the following charges against Brian Russell McCraney, a suspended member of the Institute:

1. THAT, the said Brian Russell McCraney, during the period March 29, 1999 to June 20, 2000, failed to cooperate with officers, servants or agents of the Institute who were appointed to arrange or conduct an inspection of his practice, contrary to Rule 203.2 of the rules of professional conduct.
2. THAT, the said Brian Russell McCraney, during the period November 4, 1999 to June 20, 2000, failed to promptly reply in writing to a letters from the Institute in respect of a matter of professional conduct signed by the director of standards enforcement and dated and sent November 4, 1999 and May 15, 2000 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

Dated at Toronto this 20<sup>th</sup> day of June, 2000.

MICHAEL CONNOLLY, FCA  
DEPUTY CHAIR, PROFESSIONAL CONDUCT COMMITTEE

## **DISCIPLINE COMMITTEE re BRIAN RUSSELL McCRANEY**

**DECISION AND ORDER IN THE MATTER OF:** Charges against **BRIAN RUSSELL McCRANEY**, a suspended member of the Institute, under **Rules 104 and 203.2** of the Rules of Professional Conduct, as amended.

**DECISION AND ORDER MADE NOVEMBER 28, 2000**

### **DECISION**

THAT, having seen and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. McCraney pursuant to Institute Bylaw 560, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to each of charges Nos. 1 and 2, the Discipline Committee finds Brian Russell McCraney guilty of charges Nos. 1 and 2.

### **ORDER**

IT IS ORDERED in respect of the charges:

1. THAT Mr. McCraney be reprimanded in writing by the chair of the hearing.
2. THAT Mr. McCraney be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. McCraney submit to the director of practice inspection the material requested in the letter of June 22, 1999 from Grant F. Dickson, FCA, within fourteen (14) days of the date of personal service on Mr. McCraney of this Decision and Order.
4. THAT notice of this Decision and Order, disclosing Mr. McCraney's name, be given after this Decision and Order becomes final under the bylaws:
  - (a) to the Public Accountants Council for the Province of Ontario;
  - (b) to the Canadian Institute of Chartered Accountants; and
  - (c) by publication in *CheckMark*.
5. THAT in the event Mr. McCraney fails to comply with any of the requirements of this Order within the time periods specified, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified in paragraph 4 hereof, and in the *Brantford Expositor* and the *Hamilton Spectator*.

DATED AT TORONTO THIS 19TH DAY OF DECEMBER, 2000  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

## **DISCIPLINE COMMITTEE re BRIAN RUSSELL McCRANEY**

**REASONS FOR THE ORDER IN THE MATTER OF:** Charges against **BRIAN RUSSELL McCRANEY**, a suspended member of the Institute, under **Rules 104 and 203.2** of the Rules of Professional Conduct, as amended.

### **REASONS FOR THE DECISION AND ORDER MADE NOVEMBER 28, 2000**

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on November 28, 2000 to hear evidence concerning two charges brought by the professional conduct committee against Brian Russell McCraney.

The professional conduct committee was represented by Ms. Deborah McPhadden. Mr. McCraney was not present and was not represented by counsel.

The hearing concluded on November 28, 2000 and the panel's decision and order was issued on December 19, 2000. These reasons, issued in writing pursuant to Bylaw 574, contain the panel's decision and order and the charges laid by the professional conduct committee, as well as the reasons of the panel.

The panel reviewed the affidavit of personal service of the notice of assignment hearing, and the affidavit of service of the notice of hearing, which were filed as exhibits. The panel was satisfied that Mr. McCraney had proper notice of the hearing, and decided to proceed in his absence pursuant to Institute Bylaw 560. Prior to proceeding, the secretary of the discipline committee searched the common areas around the hearing room, but Mr. McCraney was not present. A plea of not guilty was then entered on his behalf to the following charges laid against him:

1. THAT, the said Brian Russell McCraney, during the period March 29, 1999 to June 20, 2000, failed to cooperate with officers, servants or agents of the Institute who were appointed to arrange or conduct an inspection of his practice, contrary to Rule 203.2 of the rules of professional conduct.
2. THAT, the said Brian Russell McCraney, during the period November 4, 1999 to June 20, 2000, failed to promptly reply in writing to letters from the Institute in respect of a matter of professional conduct signed by the director of standards enforcement and dated and sent November 4, 1999 and May 15, 2000 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

### **DECISION ON THE CHARGES**

In presenting her case, counsel for the professional conduct committee filed affidavits of Joanna Maund, FCA, Institute director of standards enforcement, and Grant Dickson, FCA, Institute director of practice inspection, together with a document brief, all of which were filed as exhibits. The evidence filed made it clear that Mr. McCraney had failed to cooperate with the practice inspection committee in the attempted reinspection of his practice, and had subsequently failed to reply in writing to letters signed by the director of standards enforcement relating to his failure to cooperate with practice inspection.

## **Charge No. 1**

Mr. McCraney's practice was scheduled for reinspection under the Institute's practice inspection program in the summer of 1999. On March 29, 1999, by regular mail, and again on June 22, 1999, by registered mail, Mr. McCraney was asked to send certain information to practice inspection so that a reinspection of his practice could be arranged.

In September 1999, during a telephone conversation with Mr. Dickson, Mr. McCraney requested that his reinspection be deferred until the following year. This request was denied. By letter dated September 20, 1999, Mr. Dickson asked Mr. McCraney to deliver the requested material by October 4, 1999. None of the letters were returned to the Institute, which indicated that they had been received by Mr. McCraney. None of the requested material had been delivered to the Institute at the date of this hearing.

## **Charge No. 2**

Following receipt of a complaint from the director of practice inspection, the director of standards enforcement sent a letter to Mr. McCraney dated November 4, 1999 requesting a reply on or before November 20, 1999. A copy of Canada Post's certificate of delivery confirmation appears in the document brief. Mr. McCraney did not reply to this letter. A further registered letter requesting a reply on or before June 5, 2000 was mailed on May 15, 2000 and was successfully delivered to Mr. McCraney on May 17, 2000. A copy of Canada Post's certificate of delivery confirmation for this letter also appears in the document brief. Mr. McCraney had not, at the date of this hearing, responded to either letter.

After considering the evidence, and the submissions made by Ms. McPhadden, the panel concluded that the allegations set out in the charges had been proven and that Mr. McCraney was guilty of both charges of professional misconduct. The panel's formal decision was as follows:

### **DECISION**

THAT, having seen and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. McCraney pursuant to Institute Bylaw 560, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to each of charges Nos. 1 and 2, the Discipline Committee finds Brian Russell McCraney guilty of charges Nos. 1 and 2.

### **ORDER AS TO SANCTION**

The professional conduct committee submitted that the appropriate sanction should be:

- a reprimand in writing by the chair of the hearing;
- a requirement to comply with the request made in the letter of June 22, 1999 by Mr. Dickson, within seven days of the order becoming final under the bylaws;
- a fine of \$2,500;
- full publicity; and
- expulsion in the event of non-compliance.

Ms. McPhadden submitted that allowing seven days to comply after the order becomes final was adequate in view of the time required for the order to become final. Should there be no

compliance, expulsion was the only alternative, she submitted, since non-compliance would indicate that Mr. McCraney was ungovernable.

Ms. McPhadden requested a fine, both as a general and specific deterrent, and provided the panel with a number of precedents, noting that in the *Humphrey* case the professional conduct committee had asked for a fine of \$2,500 in order to deter like-minded members from failing to respond to letters from the Institute.

As far as publicity was concerned, Ms. McPhadden submitted that there were no rare or unusual circumstances in this case that should lead the discipline committee to either dispense with publication, or withhold the member's name from publication.

Upon deliberation, the panel made the following order:

### ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. McCraney be reprimanded in writing by the chair of the hearing.
2. THAT Mr. McCraney be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. McCraney submit to the director of practice inspection the material requested in the letter of June 22, 1999 from Grant F. Dickson, FCA, within fourteen (14) days of the date of personal service on Mr. McCraney of this Decision and Order.
4. THAT notice of this Decision and Order, disclosing Mr. McCraney's name, be given after this Decision and Order becomes final under the bylaws:
  - (a) to the Public Accountants Council for the Province of Ontario;
  - (b) to the Canadian Institute of Chartered Accountants; and
  - (d) by publication in *CheckMark*.
5. THAT in the event Mr. McCraney fails to comply with any of the requirements of this Order within the time periods specified, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified in paragraph 4 hereof, and in the *Brantford Expositor* and the *Hamilton Spectator*.

In considering the appropriate sanction, the panel considered the three general principles of sentencing, namely rehabilitation, general deterrence and specific deterrence. The panel noted that Mr. McCraney was currently a suspended member of the Institute due to failure to pay the annual fees, and concluded that general deterrence and specific deterrence were particularly relevant in the determination of appropriate sanction in this case.

### **Reprimand**

The panel believes that a reprimand in writing from the chair of the hearing stresses to Mr. McCraney the unacceptability of his conduct as a chartered accountant.

### **Fine**

The professional conduct committee submitted that a fine should be levied against Mr. McCraney in the amount of \$2,500. The panel agreed that a fine was appropriate in this case, both as a specific deterrent to Mr. McCraney, and as a general deterrent to like-minded members. The panel, however, wished to allow Mr. McCraney one final opportunity to cooperate with practice inspection, and did not wish to set the fine at a level which, when combined with his unpaid fees, would deter Mr. McCraney from complying with the order. A fine of \$1,000 was felt to be appropriate in these circumstances.

### **Cooperation with Practice Inspection**

The panel noted the submission of counsel for the professional conduct committee that Mr. McCraney should be allowed seven days from the date of the decision and order becoming final under the bylaws to cooperate with practice inspection. In view of the considerable length of time that had elapsed since Mr. McCraney was first requested to submit information (March 29, 1999), we were of the opinion that a shorter period would be appropriate. The panel accordingly ordered Mr. McCraney to supply the information requested in Mr. Dickson's June 22, 1999 letter within 14 days of the date of service of the decision and order upon him, such service to be personal service.

### **Notice**

The giving of notice of the discipline committee's decision and order disclosing Mr. McCraney's name, is, in the opinion of the panel, a general deterrent. It is the discipline committee's responsibility to ensure that members of the profession and the general public are made aware that failure on the part of members to cooperate with the regulatory processes of the Institute will result in the imposition of serious sanctions.

### **Failure to Comply**

The panel's order required Mr. McCraney to cooperate with practice inspection within a specified time. He has been given many previous opportunities to cooperate, and this is the last one. Failure to comply with any of the requirements of the order within the prescribed time periods will result in Mr. McCraney's immediate expulsion from membership in the Institute.

DATED AT TORONTO THIS 17TH DAY OF JANUARY, 2001  
BY ORDER OF THE DISCIPLINE COMMITTEE

P.B.A. CLARKSON, CA - DEPUTY CHAIR  
THE DISCIPLINE COMMITTEE

### **MEMBERS OF THE PANEL:**

S.W. SALTER, CA  
D.O. STIER, CA  
B.A. TANNENBAUM, FCA  
R.D. WHEELER, FCA  
D.J. ANDERSON (Public representative)

## **APPEAL COMMITTEE re BRIAN RUSSELL McCRANEY**

**ORDER MADE IN THE MATTER OF:** An appeal by the Professional Conduct Committee of the Decision and Order of the Discipline Committee made against **BRIAN RUSSELL McCRANEY** on November 28, 2000 pursuant to the bylaws of the Institute, as amended.

### **ORDER MADE JUNE 21, 2001**

HAVING determined to proceed with this hearing in the absence of Mr. McCraney, pursuant to Bylaw 616, being satisfied that he had proper notice of the hearing, and having heard and considered the submissions made on behalf of the professional conduct committee upon its appeal of the order of the discipline committee made on November 28, 2000, the appeal committee orders:

1. THAT the appeal of the professional conduct committee be and it is hereby allowed.
2. THAT the purported expulsion of Mr. McCraney from membership in the Institute effective January 18, 2001, as reflected in the letter of January 22, 2001 to Mr. McCraney from Mr. T. E. Warner, Institute vice-president and registrar, be and it is hereby vacated.
3. THAT Mr. McCraney may appeal the decision and order of the discipline committee made on November 28, 2000 by filing written notice of appeal and other required documentation pursuant to Bylaw 611 with the secretary of the appeal committee within thirty (30) days of the date Mr. McCraney is served with copies of the appeal committee's order and reasons, failing which the decision and order of the discipline committee made on November 28, 2000 shall become final under the bylaws.
4. THAT the time period stipulated in paragraph 3 of the discipline committee's decision and order of November 28, 2000 shall begin to run from the date the decision and order of the discipline committee becomes final under the bylaws pursuant to paragraph 3 of this order.
5. THAT in all other respects the terms of the decision and order of the discipline committee made on November 28, 2000 be and they are hereby confirmed.

DATED AT TORONTO, THIS 25TH DAY OF JUNE, 2001  
BY ORDER OF THE APPEAL COMMITTEE

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



## **APPEAL COMMITTEE re BRIAN RUSSELL McCRANEY**

**DECISION AND REASONS IN THE MATTER OF:** An appeal by the Professional Conduct Committee of the Decision and Order of the Discipline Committee made against **BRIAN RUSSELL McCRANEY** on November 28, 2000 pursuant to the bylaws of the Institute, as amended.

### **DECISION AND REASONS FOR DECISION MADE JUNE 21, 2001**

This appeal was heard by a panel of the appeal committee of the Institute of Chartered Accountants of Ontario on June 21, 2001

Mr. Paul Farley appeared on behalf of the professional conduct committee. Mr. McCraney did not appear either personally or through counsel. The panel satisfied itself that Mr. McCraney had received proper notice of this appeal before deciding to proceed in his absence.

### **THE DISCIPLINE COMMITTEE'S DECISION AND ORDER**

The professional conduct committee had laid the following two charges of professional misconduct against Mr. McCraney:

3. THAT, the said Brian Russell McCraney, during the period March 29, 1999 to June 20, 2000, failed to cooperate with officers, servants or agents of the Institute who were appointed to arrange or conduct an inspection of his practice, contrary to Rule 203.2 of the rules of professional conduct.
4. THAT, the said Brian Russell McCraney, during the period November 4, 1999 to June 20, 2000, failed to promptly reply in writing to letters from the Institute in respect of a matter of professional conduct signed by the director of standards enforcement and dated and sent November 4, 1999 and May 15, 2000 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

On November 28, 2000, the discipline committee found Mr. McCraney guilty of both charges, and then went on to make the following order:

1. THAT Mr. McCraney be reprimanded in writing by the chair of the hearing.
3. THAT Mr. McCraney be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. McCraney submit to the director of practice inspection the material requested in the letter of June 22, 1999 from Grant F. Dickson, FCA, within fourteen (14) days of the date of personal service on Mr. McCraney of this Decision and Order.
4. THAT notice of this Decision and Order, disclosing Mr. McCraney's name, be given after this Decision and Order becomes final under the bylaws:

- (a) to the Public Accountants Council for the Province of Ontario;
  - (b) to the Canadian Institute of Chartered Accountants; and
  - (c) by publication in *CheckMark*.
5. THAT in the event Mr. McCraney fails to comply with any of the requirements of this Order within the time periods specified, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified in paragraph 4 hereof, and in the *Brantford Expositor* and the *Hamilton Spectator*.

## **RELIEF SOUGHT**

The professional conduct committee asked for the following relief:

- that the appeal committee exercise its jurisdiction pursuant to Bylaw 605 and declare the purported expulsion of Mr. McCraney from membership in the Institute to be void;
- that Mr. McCraney's appeal rights be restored; and
- that the time periods set out in the discipline committee's order not begin to run until after the decision and order becomes final following the expiry of the restored appeal period.

## **THE APPEAL COMMITTEE'S ORDER**

After reviewing the documents filed, and hearing the submissions made by counsel for the professional conduct committee, the appeal committee made the following order:

- 6. THAT the appeal of the professional conduct committee be and it is hereby allowed.
- 7. THAT the purported expulsion of Mr. McCraney from membership in the Institute effective January 18, 2001, as reflected in the letter of January 22, 2001 to Mr. McCraney from Mr. T. E. Warner, Institute vice-president and registrar, be and it is hereby vacated.
- 8. THAT Mr. McCraney may appeal the decision and order of the discipline committee made on November 28, 2000 by filing written notice of appeal and other required documentation pursuant to Bylaw 611 with the secretary of the appeal committee within thirty (30) days of the date Mr. McCraney is served with copies of the appeal committee's order and reasons, failing which the decision and order of the discipline committee made on November 28, 2000 shall become final under the bylaws.
- 9. THAT the time period stipulated in paragraph 3 of the discipline committee's decision and order of November 28, 2000 shall begin to run from the date the decision and order of the discipline committee becomes final under the bylaws pursuant to paragraph 3 of this order.
- 10. THAT in all other respects the terms of the decision and order of the discipline committee made on November 28, 2000 be and they are hereby confirmed.

## **THE PROFESSIONAL CONDUCT COMMITTEE'S GROUNDS FOR APPEAL**

Mr. Farley commenced his address to the panel by indicating that this was a most unusual

appeal, as it had been launched by the professional conduct committee to preserve the bylaw rights of the member, Mr. McCraney, who had shown no interest in any of the past or current proceedings. Mr. Farley stated that the professional conduct committee was pursuing this appeal in order to ensure that the process is fair and that justice is done, and submitted that, on account of a timing issue, there had been a failure by the discipline committee to follow due process in this case.

The matter came before the discipline committee on November 28, 2000. The committee found Mr. McCraney guilty of the charges laid and made a sanctions order against him. One of the terms of the order was that he cooperate with practice inspection within fourteen days of being personally served with the committee's decision and order. Mr. McCraney was personally served with the decision and order on January 3, 2001, failed to cooperate within the fourteen day period as required, and was consequently expelled effective January 18, 2001.

The reasons of the discipline committee, however, were not issued until January 17, 2001, and were mailed to Mr. McCraney with a letter from the discipline committee secretary advising him that he had until February 27, 2001 to appeal the committee's decision and order. Pursuant to the bylaws, Mr. McCraney would be deemed to have received the letter and reasons on the tenth day after mailing. Accordingly, by the time Mr. McCraney received or was deemed to have received the discipline committee's reasons and the letter advising him of his appeal rights, he had already been expelled from membership pursuant to the order.

The effect of this was that, having already been expelled, Mr. McCraney was denied his bylaw right to file an appeal of the discipline committee's decision and order because, as a non-member, he no longer had any membership rights under the Institute's bylaws. In order to preserve the integrity of the disciplinary process, therefore, the professional conduct committee requested that Mr. McCraney be reinstated to Institute membership and given back his right to appeal the decision and order of the discipline committee.

## **PANEL'S DETERMINATION**

Following its deliberations, the panel agreed with Mr. Farley's position that the Institute had not followed its own bylaws with respect to the period to be afforded to Mr. McCraney for filing an appeal of the decision and order of the discipline committee, and accordingly allowed the professional conduct committee's appeal.

DATED AT TORONTO, THIS 30TH DAY OF AUGUST, 2001  
BY ORDER OF THE APPEAL COMMITTEE

M.B. MARTENFELD, FCA –CHAIR  
THE APPEAL COMMITTEE

### MEMBERS OF THE PANEL:

A.R. BYRNE, CA  
J.J. LONG, CA  
L.L. WORTHINGTON, FCA  
B. BOWDEN (Public representative)