

David Christopher Conway: Summary, as Published in *CheckMark*

David Christopher Conway, of Oshawa, 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. Conway

- be reprimanded in writing by the chair of the hearing;
- be fined \$4,000, to be paid within a specified time; and
- reply in writing, within a specified time, to the Institute letter to which he had earlier failed to reply.

CHARGE(S) LAID re David Christopher Conway

The Professional Conduct Committee hereby makes the following charge against David C. Conway, a suspended member of the Institute:

1. THAT, the said David C. Conway, failed to promptly reply in writing to a letter from the Institute, in respect of a matter of professional conduct, signed by an associate director of standards enforcement and dated and sent April 25, 1991, in which a reply was specifically requested, contrary to Rule 104 of the rules of professional conduct.

DATED at Toronto this 20th day of August 1991.

J.L . BADALI, FCA - DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re David Christopher Conway

DECISION AND ORDER IN THE MATTER OF: A charge against DAVID CHRISTOPHER CONWAY, CA, a member of the Institute, under Rule 104 of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE DECEMBER 3, 1991

DECISION

THAT, having seen and considered the evidence, and having heard the plea of guilty to the charge, THE DISCIPLINE COMMITTEE FINDS David Christopher Conway guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Conway be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Conway be and he is hereby fined the sum of \$4,000, to be remitted to the Institute as follows:
 - (a) \$2,000 within three (3) months from the date this Decision and Order becomes final under the bylaws; and
 - (b) a further \$2,000 within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Conway deliver to the Institute's associate director of standards enforcement, within ten (10) days from the date this Decision and Order becomes final under the bylaws, his written response to the letter from the associate director of standards enforcement, which was dated and sent April 25, 1991.
4. THAT notice of this Decision and Order, disclosing Mr. Conway's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants.
5. THAT in the event Mr. Conway 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 addition, shall be given to local newspapers in the Oshawa area.

DATED AT TORONTO, THIS 10TH DAY OF DECEMBER, 1991
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re David Christopher Conway

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: A charge against DAVID CHRISTOPHER CONWAY, 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 DECEMBER 3, 1991

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on December 3, 1991.

Mr. Paul Farley attended on behalf of the professional conduct committee. Mr. Conway attended the hearing without counsel, and confirmed for the record that he understood that he had a right to counsel but that he wished to proceed without counsel.

The professional conduct committee had laid one charge of professional misconduct against Mr. Conway, under Rule of Professional Conduct 104, and he pleaded guilty to that charge.

The member confirmed that he understood that upon a plea of guilty, and upon that basis alone, he could be found guilty by the discipline committee.

On behalf of the professional conduct committee, Mr. Farley filed a document brief which included a letter, dated March 22, 1991, to Mr. Conway from the Institute's associate director of standards enforcement, advising that the professional conduct committee wished to begin an investigation into his professional standards, and specifically requesting his written reply pursuant to Rule 104 by April 11, 1991; and a follow-up letter, dated April 25, 1991, from the associate director of standards enforcement, stating that the member had failed to reply to the March 22 letter, and advising that if he again failed to reply by May 15, 1991, his conduct would be referred to the professional conduct committee and may result in a charge or charges laid against him. Affidavit evidence was filed by the professional conduct committee to establish that

- the letter from the associate director of standards enforcement dated March 22, 1991 had been sent to Mr. Conway at his last known address, by ordinary mail;
- the letter from the associate director of standards enforcement dated April 25, 1991 had been sent to Mr. Conway at his last known address, by registered mail;
- the post office had returned the Acknowledgement of Receipt Card for the registered letter, showing that the letter had been delivered on April 30, 1991; and no response from Mr. Conway had been received by the standards enforcement area.

Having pleaded guilty, Mr. Conway did not enter a defence to the charge. By way of explanation, however, he indicated that he had received Institute letters but that he had not opened them. Since having been involved in the Institute's disciplinary process in 1989, he

explained, and having received various correspondence in connection with it that had caused him stress and aggravated his angina, he had since stopped opening all Institute mail.

Based upon the plea of guilty, and after reviewing the evidence, the committee found Mr. Conway guilty of the charge.

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

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Conway be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Conway be and he is hereby fined the sum of \$4,000, to be remitted to the Institute as follows:
 - (a) \$2,000 within three (3) months from the date this Decision and Order becomes final under the bylaws; and
 - (b) a further \$2,000 within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Conway deliver to the Institute's associate director of standards enforcement, within ten (10) days from the date this Decision and Order becomes final under the bylaws, his written response to the letter from the associate director of standards enforcement, which was dated and sent April 25, 1991.
4. THAT notice of this Decision and Order, disclosing Mr. Conway's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants.
5. THAT in the event Mr. Conway 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 speed in paragraph 4 hereof, and, in addition, shall be given to local newspapers in the Oshawa area.

Briefly, the reasons for the committee's sanctions are set out below, with the numbers corresponding to the numbered paragraphs of the Order.

1. The committee is of the view that a reprimand is necessary as a deterrent to the member and to stress the unacceptability of his conduct as a chartered accountant.
2. The imposition of a fine in the amount of \$4,000 is appropriate in this case, most importantly as a specific deterrent to Mr. Conway, but also as a general deterrent to other members of the Institute, and as an assurance to the public that the discipline committee views members' failure to adhere to Rule of Professional Conduct 104 to be a matter of great seriousness. The committee was very aware of the fact that, in the

previous discipline committee hearing into a charge laid against Mr. Conway under Rule 104, held on July 11, 1989, a fine was not imposed "given the member's plea, his attendance at the hearing and his assurance of future co-operation". By his conduct, Mr. Conway has demonstrated that his past assurance was a hollow promise. Accordingly, he is not entitled to benefit from his representations today as to what his future conduct will be. In addition, the member's admission that he did not open Institute mail is viewed with disdain by the committee. Accordingly, a fine in the amount of \$4,000 is considered appropriate in the circumstances.

3. Mr. Conway had a significant period of time in which to respond to the letter of April 25, 1991 from the associate director of standards enforcement, and failed to do so. It is not at all onerous that he now be required to provide such response within ten days from the date this Decision and Order becomes final, or face expulsion.
4. The committee has ordered publication and notice of its order, including disclosure of the member's name, as both a specific deterrent to the member charged and a general deterrent to all members. In addition, the committee considers publicity necessary to demonstrate to the public that the profession is regulating itself, so as to retain public confidence in the profession's ability to self-govern.
5. The committee is of the opinion that, based upon the member's previous conduct, expulsion must immediately follow any non-compliance by Mr. Conway with the terms of the committee's Order. The contingency of expulsion in the event of non-compliance with the terms of a disciplinary Order is a sanction which is necessary to the preservation of the profession's good reputation and its ability to effectively serve the public interest, as a method of enabling the profession to ultimately deal with those members who refuse to be bound by the self-regulating aspects of the profession. In the event of expulsion, the committee orders that additional notice be given to the local newspapers in the community in which the member is actively involved.

DATED AT TORONTO, THIS 9th DAY OF JANUARY, 1992
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

C.J. BURKE, FCA
L.R. FLEMMING, CA
H.R. KLEIN, CA
R.J. NOBES, FCA
B.W. BOWDEN, PhD (Public representative)