

Don George McLeod: Summary, as Published in *CheckMark*

Don George McLeod, of Waterloo, was found guilty of two charges under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest. While acting as office administrator of a law firm, Mr. McLeod misappropriated over \$30,000 from the firm by writing, signing and cashing for his own use 61 law firm cheques. After resigning to take a position as general manager of a cooperative residence, he misappropriated over \$13,000 from his new employer to help repay the funds misappropriated from his previous employer. Mr. McLeod was fined \$5,000 and expelled from the Institute.

CHARGE(S) LAID re Don George McLeod

The Professional Conduct Committee hereby makes the following charge against Don G. McLeod, a member of the Institute:

1. THAT the said Don G. McLeod, in or about the period March 21, 1998 through to September 30, 2000, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that, having been employed by the law firm of Hobson, Taylor, Oldfield, Greaves & D'Agostino as office administrator, he misappropriated approximately \$30,260.00 from the firm, contrary to Rule 201.1 of the rules of professional conduct.
2. THAT the said Don G. McLeod, on or about January 2, 2001, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that, while employed by the Waterloo Co-operative Residence as General Manager, he misappropriated approximately \$13,544.50 by arranging, without authorization, the transfer of funds from a bank account of Waterloo Co-operative Residence to a bank account of the law firm of Hobson, Taylor, Oldfield, Greaves & D'Agostino in order to repay a portion of the funds he had misappropriated from the law firm, contrary to Rule 201.1 of the rules of professional conduct.

Dated at Toronto, Ontario this 2nd day of October, 2001.

R.A. JOHNSTON, FCA – CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Don George McLeod

DECISION AND ORDER IN THE MATTER OF: Charges against **DON GEORGE McLEOD, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE JANUARY 29, 2002

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1 and 2, the Discipline Committee finds Don George McLeod guilty of charges Nos. 1 and 2.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. McLeod be reprimanded in writing by the chair of the hearing.
2. THAT Mr. McLeod be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within eighteen (18) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. McLeod be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. McLeod's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
 - (c) to the Public Accountants Council for the Province of Ontario;
 - (d) to the Canadian Institute of Chartered Accountants;
 - (e) by publication in *CheckMark*; and
 - (f) by publication in the *Kitchener-Waterloo Record*.

DATED AT TORONTO THIS 5TH DAY OF FEBRUARY, 2002
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Don George McLeod

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **DON GEORGE McLEOD, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE JANUARY 29, 2002

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on January 29, 2002 to hear evidence concerning charges brought by the professional conduct committee against Mr. Don George McLeod.
2. Ms. Barbara Glendinning appeared for the professional conduct committee. She was accompanied by Mr. Stuart Douglas, the investigator appointed by the professional conduct committee. Mr. McLeod attended the hearing with his counsel, Mr. Ian Macmillan.
3. The panel's decision and order was made known at the hearing on January 29, 2002, and the formal written decision and order was sent to Mr. McLeod on February 5. These reasons, issued in writing pursuant to Bylaw 574, set out the panel's decision and order and the charges made by the professional conduct committee.

DECISION ON THE CHARGES

4. The charges dated October 2, 2001, which were filed as an exhibit at the hearing, read as follows:
 1. THAT the said Don G. McLeod, in or about the period March 21, 1998 through to September 30, 2000, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that, having been employed by the law firm of Hobson, Taylor, Oldfield, Greaves & D'Agostino as office administrator, he misappropriated approximately \$30,260.00 from the firm, contrary to Rule 201.1 of the rules of professional conduct.
 2. THAT the said Don G. McLeod, on or about January 2, 2001, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that, while employed by the Waterloo Co-operative Residence as General Manager, he misappropriated approximately \$13,544.50 by arranging, without authorization, the transfer of funds from a bank account of Waterloo Co-operative Residence to a bank account of the law firm of Hobson, Taylor, Oldfield, Greaves & D'Agostino in order to repay a portion of the funds he had misappropriated from the law firm, contrary to Rule 201.1 of the rules of professional conduct.
5. Mr. McLeod entered a plea of guilty to both charges, and confirmed for the record that he understood that on the basis of his plea of guilty and on that basis alone he could be found guilty of the charges.

6. Ms. Glendinning filed an agreed statement of facts and a document brief which she reviewed for the panel during the presentation of her case. Mr. Macmillan did not call evidence but made submissions with respect to the evidence that had been presented.

Simply put, the facts of the case are that during the period March 1998 to September 2000, while employed as the office administrator of the law firm Hobson, Taylor, Oldfield, Greaves & D'Agostino in Waterloo, Mr. McLeod, without authority, wrote, signed and cashed for his own use 61 law firm cheques totaling \$30,260. He resigned from the law firm in September 2000 to take the position of general manager of Waterloo Co-operative Residence (WCR). His former employer thereafter discovered and confronted him with his misappropriations, whereupon Mr. McLeod paid back the stolen funds and reported his misconduct to the Institute. He failed to report, however, that some of the money used to repay his former employer was money stolen from his new employer – a fact which only later came to light upon the filing of a complaint by WCR's accounting firm. Mr. McLeod told the professional conduct committee investigator Mr. Douglas that he took funds from Hobson Taylor because he had accumulated an overwhelming personal debt load, and needed the money to discharge this indebtedness and to buy groceries and other necessities for his family and himself.

7. The panel deliberated on the charges in the absence of the parties and its own counsel and secretary, and concluded that the charges had been proven and that Mr. McLeod was guilty of professional misconduct.
8. When we had finished our deliberations, the hearing resumed and the following decision was read into the record:

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1 and 2, the Discipline Committee finds Don George McLeod guilty of charges Nos. 1 and 2.

ORDER AS TO SANCTION

9. Ms. Glendinning did not call evidence with respect to the issue of sanction, but she filed a book of authorities and made submissions.
10. Mr. Macmillan also did not call *viva voce* evidence with respect to sanction, but filed a book of documents and authorities and made submissions. Mr. McLeod spoke to the panel and apologized for his misconduct.
11. When imposing a sanction for professional misconduct the discipline committee must consider three principles: general deterrence, specific deterrence and rehabilitation. While the panel recognized that no two cases are exactly alike, it considered and compared Mr. McLeod and his misconduct to other members who had been found guilty of similar offences and their misconduct. Such misconduct and such members were also compared to unoffending members and their conduct. The objective is to impose a sanction which is both fair in the circumstances of the case before the panel, and at the same time consistent with sanctions ordered in previous similar cases.

12. The elements of sanction which the parties disagreed on were the appropriate quantum of fine, the appropriateness of expulsion or a one year suspension from membership, and the appropriateness of newspaper publication. Mr. Macmillan submitted that there were seven reasons why Mr. McLeod should be suspended and not expelled, why there should be no newspaper publication, and why any fine ordered should be in a considerably lesser amount than that requested by the professional conduct committee. These reasons were that Mr. McLeod had made restitution, shown remorse, admitted his guilt, cooperated with the investigator, been rehabilitated, suffered enough from his misconduct, and for the foregoing reasons demonstrated himself to be worthy of compassion from the panel.

13. The discipline committee, after listening to the submissions, deliberated and made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. McLeod be reprimanded in writing by the chair of the hearing.
2. THAT Mr. McLeod be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within eighteen (18) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. McLeod be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. McLeod'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 the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in the *Kitchener-Waterloo Record*.

Reprimand

14. The panel is of the view that a reprimand is necessary as a specific deterrent to Mr. McLeod. It will stress to him the serious nature of his offences, and the unacceptability of his conduct as a chartered accountant, regardless of his circumstances.

Fine of \$5,000

15. Ms. Glendinning suggested a fine of \$10,000, while Mr. Macmillan submitted that a fine of \$2,000 to \$3,000 would be in the appropriate range.
16. The panel agreed with Ms. Glendinning that a significant monetary penalty was warranted as a specific deterrent and message to Mr. McLeod that it was not acceptable for him to help himself to funds belonging to others just because he was in need of cash. A fine also serves as a general deterrent to like-minded members who may find themselves in similar circumstances.

17. The panel felt that a fine of \$5,000 was within the range of fines levied in other similar cases. We recognized that Mr. McLeod has limited financial resources, and accordingly ordered a payment period of 18 months.

Expulsion

18. Mr. Macmillan submitted that a one year suspension would be appropriate in this case, citing that Mr. McLeod had:

- made full restitution within a short time period;
- admitted his wrongdoing, cooperated in the investigation and pled guilty; and
- clearly indicated a great remorse.

20. Ms. Glendinning, who sought expulsion on behalf of the professional conduct committee, agreed there were some mitigating circumstances, but submitted they were outweighed by aggravating factors, and were not sufficient to warrant merely a suspension.

21. The panel determined that Mr. McLeod's actions represented behaviour that extended beyond a momentary lapse of judgment, and was conduct that undermined the public trust and reputation of the profession. In arriving at its decision, the panel noted that:

- Mr. McLeod did not come forward voluntarily.
- Although the misappropriation of funds from Hobson Taylor was reported by Mr. McLeod to the Institute by letter dated March 21, 2001, he failed to mention in his letter that he had also misappropriated funds on January 2, 2001 from his new employer WCR. That occurrence was not reported to the Institute until April 16, 2001, and not by Mr. McLeod but by the accountants for WCR.
- Mr. McLeod's misconduct involved more than 60 separate occurrences taking place over a 2½ year period.
- Mr. McLeod had an opportunity to put an end to his misconduct when he was confronted with his misappropriations from Hobson Taylor late in 2000. Instead, he began 2001 with a new misappropriation to help repay his previous ones.

22. Mr. Macmillan requested leniency from the panel on compassionate grounds, due to the state of Mr. McLeod's financial circumstances, his ill health, and the ill health of his father. Mr. McLeod had undergone heart bypass surgery and had other medical problems, and his father had been on life support during some of the relevant time. While these factors generated sympathy for Mr. McLeod, they did not persuade the panel that it was appropriate to impose only a suspension for deliberate misappropriations over an extended period of time. The profession cannot tolerate members who are placed in positions of trust and breach that trust.

23. There was no evidence that Mr. McLeod had been rehabilitated. There was no evidence that the medical problems were what led to his misconduct. Mr. McLeod expressed remorse in late 2000 for stealing money from an employer, and then did it again in 2001.

24. For these reasons, the panel concluded there was no appropriate alternative to expulsion in this case.

Publicity

25. Publication of the panel's decision and order in the manner specified serves the need of general deterrence and education of the membership at large. In addition, demonstrating the openness of the Institute's disciplinary process enhances public confidence in the ability of the profession to govern itself.

26. Mr. Macmillan sought to have newspaper publication withheld in order to spare Mr. McLeod's family, and in particular his children, from the stigma of such disclosure. The circumstances necessary to persuade a discipline panel to dispense with such publication have to be rare and unusual, and such circumstances were not in evidence in this case. The unfortunate fact that a member's family may be adversely affected by a member's misconduct or the resulting publicity of that misconduct is not and cannot be considered a rare or unusual circumstance warranting the withholding of publication of notice of the member's expulsion for professional misconduct.

Membership certificate

27. The panel considers it important to note herein that the reason it did not order the surrender of Mr. McLeod's membership certificate was that he had already previously surrendered it to the professional conduct committee.

DATED AT TORONTO THIS 18TH DAY OF MARCH, 2002
BY ORDER OF THE DISCIPLINE COMMITTEE

H.B. BERNSTEIN, CA – DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

P.A. GOGGINS, CA
G.R. PEALL, CA
S.W. SALTER, CA
R.D. WHEELER, FCA
N.C. AGARWAL (Public representative)