

Donald Wayne Brown: Summary, as Published in *CheckMark*

Donald Wayne Brown, of Mississauga, was found guilty by the discipline committee of two charges of professional misconduct, laid by the professional conduct committee, namely

- one charge, under Rule of Professional Conduct 206.2, of expressing an opinion on financial statements while failing to comply in all material respects with the generally accepted auditing standards of the profession; and
- one charge, under Rule 206.4, of expressing an opinion without reservation that a balance sheet was prepared in accordance with generally accepted accounting principles, when such balance sheet departed materially from the recommendations set out in the *CICA Handbook* at the material time.

The committee ordered that he

- be reprimanded in writing by the chairman of the hearing; and
- be assessed costs of \$18,600, to be paid within specified times.

Failure to comply with the latter term of the order would have resulted in Mr. Brown's suspension from membership. Continued non-compliance for thirty days would have resulted in expulsion from membership.

Mr. Brown has complied with the order.

CHARGE(S) LAID re Donald Wayne Brown

CHARGES WITHDRAWN BY P.C.C. FEB 14/90 & REPLACED

The Professional Conduct Committee hereby makes the following charges against Donald W. Brown, a member of the Institute:

1. ~~THAT, the said Donald W. Brown, on or about the 1st day of May 1984, did express an opinion on financial statements of Gemcraft Limited as at December 31, 1983, and did not comply in all material respects with the generally accepted auditing standards of the profession, contrary to Rule 206.2 of the Rules of Professional Conduct as amended June 15, 1981, in that:~~
 - a) ~~there was insufficient appropriate audit evidence obtained to afford a reasonable basis to support the presentation of the item "Inventories -- Note B \$2,036,977.00" on the balance sheet;~~
 - b) ~~there was insufficient appropriate audit evidence obtained with respect to inventories to afford a reasonable basis to support the content of his audit report;~~
 - c) ~~there was a failure to document procedures and matters with respect to his audit of inventories which were important to provide evidence to support the content of his audit report;~~
2. ~~THAT, the said Donald W. Brown, on or about the 1st day of May 1984, did express an opinion without reservation that the balance sheet of Gemcraft Limited, as at December 31, 1983, was prepared in accordance with generally accepted accounting principles when it departed in a material respect or respects from the recommendations of the Canadian Institute of Chartered Accountants, as set out in the CICA Handbook at the material time, contrary to Rule 206.4 of the Rules of the Professional Conduct approved June 15, 1981, in that:~~
 - a) ~~value was assigned to inventories of work in process on the basis of cost of material plus the cost of directly applied labour and factory overhead on the assumption that work in process was 90% complete, without regard to the actual state of completion of the particular inventory and without undertaking any sufficient procedures to determine the actual state of completion;~~
 - b) ~~included in work in process inventory was finished merchandise purchased from outside sources. These items were not valued at the lower cost or market value but rather at a value based upon the cost of the raw materials component plus amounts for labour and overhead based on a 90% completion factor, which values exceeded the actual cost by a material amount;~~
 - c) ~~included in work in process inventory were raw materials and semi finished goods purchased from outside sources both of which were valued at the cost of the raw materials component plus amounts for labour and overhead~~

~~based on a 90% completion factor which values exceeded the actual cost by a material amount;~~

- ~~d) — precious stones and pearls included in work in process inventory were valued at material cost plus labour and overhead which were applied in a manner which materially overstated the labour and overhead costs properly attributable to these items.~~

~~3. — THAT, the said Donald W. Brown, in or about the years 1983 and 1984, in carrying out an audit engagement with respect to Gemcraft Limited, for the year ended December 31, 1983, failed to perform his professional services with due care contrary to Rule 202 of the Rules of Professional Conduct adopted June 11, 1973, in that;~~

- ~~a) — although identifying a number of situations which clearly indicated a high risk of possible misstatement of the financial statements, he failed to carry out those audit procedures with respect to the verification of the valuation of work in process inventory which would have been appropriate and necessary, in light of the high level of risk identified;~~
- ~~b) — he failed to carry out procedures with respect to some of the inventory, namely “Tru Blue Stones”, which should have detected that labour and overhead were added to the inventory value twice;~~
- ~~c) — he accepted the methodology employed with respect to determining the value of inventory that overstated the application of labour and overhead by prorating the same labour dollars over both precious metal and precious stone costs.~~

~~4. — THAT, the said Donald W. Brown, on or about the 1st day of May 1984, did express an opinion on the financial statements of Gemcraft Limited as at December 31, 1983 and failed to retain documentation and working papers which reasonably evidenced the nature and extent of the audit work done, contrary to Rule 218 of the Rules of the Professional Conduct, added June 15, 1981.~~

DATED at Toronto this 6th day of July, 1989.

R. G. LONG, C. A. - CHAIRMAN
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Donald Wayne Brown

IN THE MATTER OF: Charges against DONALD WAYNE BROWN, CA, a member of the Institute, under the following Rules of Professional Conduct: Rule 202, adopted June 11, 1973; Rule 206.2, adopted June 11, 1973, as amended June 15, 1981; Rule 206.4, added June 15, 1981; and Rule 218, added June 15, 1981.

NOTICE OF MOTION

DONALD WAYNE BROWN, C.A., will make a motion to the Discipline Committee on Tuesday, November 7, 1989, at 10:00 a.m., at the Council Chamber of the Institute, 250 Bloor Street East, 7th Floor, Toronto.

THE MOTION IS FOR an Order:

- (a) requiring the Professional Conduct Committee to produce the report prepared for it by Robert Wardell, C.A.;
- (b) requiring the Professional Conduct Committee to produce the minutes of Mr. Wardell's attendance before the Professional Conduct Committee; and
- (c) to fix a deadline for the delivery by the Professional Conduct Committee of summaries of evidence to be given by all witnesses to be called by it at the hearing and copies of all documents to be relied on by the Professional Conduct Committee at the hearing.

THE GROUNDS FOR THE MOTION ARE that the documents requested are essential to informing Donald Wayne Brown, C.A., of the case which he must meet and that no other form of disclosure will provide adequate particulars and reasonable information of the allegations against him. Donald Wayne Brown, C.A. relies on Section 8 of the Statutory Powers Procedure Act, R.S.O. 1980, chapter 484, and on Institute Bylaw 87(u).

October 20, 1989

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Solicitors for Donald Wayne Brown, C.A.

TO: B.W. Stephenson, Esq.
Secretary
The Discipline Committee

The Institute of Chartered Accountants of Ontario
7th Floor
250 Bloor Street East
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AND TO: Paul W. Farley, Esq.
Associate Director of Ethics
The Institute of Chartered Accountants of Ontario
7th Floor
250 Bloor Street East
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Solicitor for the Professional Conduct Committee

DISCIPLINE COMMITTEE re Donald Wayne Brown

ORDER IN THE MATTER OF: A notice of motion in respect of charges against DONALD WAYNE BROWN, CA, a member of the Institute, under the following Rules of Professional Conduct: Rule 202, adopted June 11, 1973; Rule 206.2, adopted June 11, 1973, as amended June 15, 1981; Rule 206.4, added June 15, 1981; and Rule 218, added June 15, 1981.

ORDER MADE DECEMBER 15, 1989

This notice of motion came before the discipline committee of the Institute of Chartered Accountants of Ontario on November 7 and December 13 and 15, 1989, in the presence of Mr. Brown and the professional conduct committee. Having heard the evidence and submissions presented by both parties, THE DISCIPLINE COMMITTEE ORDERS AS FOLLOWS:

1. THAT, in respect of paragraph (c) of the notice of motion, in light of the undertaking provided by counsel for the professional conduct committee to provide within two weeks to counsel for the member summaries of evidence to be given by all witnesses to be called by the professional conduct committee at the hearing and copies of all documents to be relied on by the professional conduct committee at the hearing, paragraph (c) of the notice of motion be adjourned *sine die*.
2. THAT paragraphs (a) and (b) of the notice of motion be and they are hereby dismissed.

DATED AT TORONTO, THIS 16TH DAY OF JANUARY, 1990
BY ORDER OF THE DISCIPLINE COMMITTEE

B.W. STEPHENSON - SECRETARY

DISCIPLINE COMMITTEE re Donald Wayne Brown

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: A notice of motion in respect of charges against DONALD WAYNE BROWN, CA, a member of the Institute, under the following Rules of Professional Conduct: Rule 202, adopted June 11, 1973; Rule 206.2, adopted June 11, 1973, as amended June 15, 1981; Rule 206.4, added June 15, 1981; and Rule 218, added June 15, 1981.

WRITTEN REASONS FOR THE ORDER MADE DECEMBER 15, 1989

The discipline committee met on November 7 and December 13 and 15, 1989, to consider a notice of motion brought by Mr. Donald Wayne Brown, CA, for an order:

- (a) requiring the professional conduct committee to produce the report prepared for it by Robert Wardell, CA:
- (b) requiring the professional conduct committee to produce the minutes of Mr. Wardell's attendance before the professional conduct committee; and
- (c) to fix a deadline for the delivery by the professional conduct committee of summaries of evidence to be given by all witnesses to be called by it at the hearing and copies of all documents to be relied on by the professional conduct committee at the hearing.

The grounds for the motion were that the documents requested are essential to inform the member of the case which he must meet and that no other form of disclosure will provide adequate particulars and reasonable information of the allegations against him. The member relied on Section 8 of the Statutory *Powers Procedure* Act, R.S.O. 1980, Chapter 484, and on Institute Bylaw 87(u).

The summaries of evidence [notice of motion paragraph (c)]

In light of an undertaking provided by Mr. Farley, counsel for the professional conduct committee, to provide within two weeks to Mr. Steiner, counsel for the member, the summaries requested in paragraph (c) of the notice of motion, and as the documents have already been provided, the committee made no determination regarding that paragraph but adjourned it *sine die*.

The report of Mr. Wardell [notice of motion paragraph (a)]

The committee concluded that, while the report was available to the professional conduct committee in its deliberations and may have been an important document in its decision-making process, the report will not be considered by the discipline committee. Instead, its decision will depend on the evidence of the witnesses at the hearing and documents filed at the hearing. The provision of the investigator's report, therefore, was not considered central or essential to the provision of reasonable information to the member.

The minutes of Mr. Wardell's attendance [notice of motion paragraph (b)]

The committee decided, based upon the description tendered to the committee of the nature and format of the minutes of professional conduct committee meetings, that the provision of these minutes was not central or essential to the provision of reasonable information to the member.

The documents are confidential

Both counsel referred to a number of decisions of courts and the decision of the appeal committee of this Institute in the case of Brian Birnbaum, CA, which considered the four widely accepted fundamental conditions which must be satisfied to establish a privilege against the disclosure of communications. These principles are expressed in *Wigmore on Evidence*, 3rd edition (McNaughton revision, 1961), volume 8, paragraph 2285:

- (1) The communications must originate in a *confidence* that they will not be disclosed.
- (2) This element of *confidentiality must be essential* to the full and satisfactory maintenance of the relation between the parties.
- (3) The *relation* must be one which in the opinion of the community ought to be sedulously *fostered*.
- (4) The *injury* that would enure to the relation by the disclosure of the communications must be *greater than the benefit* thereby gained for the correct disposal of litigation.

Applying each of the four fundamental conditions against the request of the member, the committee concluded that the report of the investigator to, and the meeting minutes of, the professional conduct committee, in respect of the complaints and charges laid against Mr. Brown, were of a confidential nature to that committee. The discipline committee considered the context in which the professional conduct committee conducts its investigations and obtains its legal advice and concluded that the injury which would result by disrupting the confidential nature of this process far outweighs the benefit to be derived.

It was also the view of the committee that in this situation, where a conflict existed between confidentiality and disclosure, the limited usefulness to the member of the investigator's report to the professional conduct committee and the minutes of the professional conduct committee meeting dictated that the need for confidentiality should override the need for disclosure in this matter.

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

CHARGE(S) LAID re Donald Wayne Brown

The Professional Conduct Committee hereby makes the following charges against Donald W. Brown, a member of the Institute:

1. THAT, the said Donald W. Brown, on or about the 1st day of May 1984, did express an opinion on financial statements of Gemcraft Limited as at December 31, 1983, and did not comply in all material respects with the generally accepted auditing standards of the profession, contrary to Rule 206.2 of the Rules of Professional Conduct as amended June 15, 1981, in that although identifying a number of situations which clearly indicated a high risk of possible misstatement of the financial statements:
 - a) there was insufficient appropriate audit evidence obtained to afford a reasonable basis to support the presentation of the item "Inventories -- Note B \$2,036,977.00" on the balance sheet and therefore to afford a reasonable basis to support the content of his audit report;
 - b) there was a failure to document procedures and matters with respect to his audit of inventories which were important to provide evidence to support the content of his audit report.
2. THAT, the said Donald Brown, on or about the 1st day of May 1984, did express an opinion without reservation that the balance sheet of Gemcraft Limited, as at December 31, 1983, was prepared in accordance with generally accepted accounting principles when it departed in a material respect or respects from the recommendations of the Canadian Institute of Chartered Accountants, as set out in the CICA Handbook at the material time, contrary to Rule 206.4 of the Rules of the Professional Conduct approved June 15, 1981, in that:
 - a) certain work in process inventory, namely semi-manufactured parts acquired from outside suppliers and certain precious metals at a raw-material stage were valued at amounts materially in excess of their actual cost, due to the improper inclusion of labour and overhead in the inventory cost ascribed to them;
 - b) precious stones and pearls included in work in process inventory were valued at material cost plus labour and overhead which were applied in a manner which materially overstated the labour and overhead costs properly attributable to these items.

DATED at Toronto this 29th day of January, 1990.

R. G. LONG, C.A. – CHAIRMAN
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Donald Wayne Brown

DECISION AND ORDER IN THE MATTER OF: Charges against DONALD WAYNE BROWN, CA, a member of the Institute, under the following Rules of Professional Conduct: Rule 206.2, adopted June 11, 1973, as amended June 15, 1981, and Rule 206.4, added June 15, 1981.

DECISION AND ORDER MADE FEBRUARY 14, 1990

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 Donald Wayne Brown guilty of charges Nos. 1 and 2.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Brown be reprimanded in writing by the chairman of the hearing.
2. THAT Mr. Brown be and he is hereby charged costs of \$18,600, to be remitted to the Institute within sixty (60) days from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Brown'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.
4. THAT in the event Mr. Brown fails to comply with the requirement of paragraph 2 of this Order within the time period therein specified, he shall thereupon be suspended from the rights and privileges of membership in the Institute, and notice of his suspension, disclosing his name, shall be given in the manner specified in paragraph 3 hereof.
5. THAT in the event Mr. Brown is suspended pursuant to paragraph 4 hereof, the suspension shall terminate upon compliance with the term of the Order in respect of which he was suspended, provided that he complies within thirty (30) days from the date of his suspension.
6. THAT in the event Mr. Brown fails to terminate suspension within thirty (30) days, 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 3 hereof.

DATED AT TORONTO, THIS 23RD DAY OF FEBRUARY, 1990
BY ORDER OF THE DISCIPLINE COMMITTEE

B.W. STEPHENSON - SECRETARY
THE DISCIPLINE COMMITTEE

DISCIPLINE COMMITTEE re Donald Wayne Brown

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against DONALD WAYNE BROWN, CA, a member of the Institute, under the following Rules of Professional Conduct: Rule 206.2, adopted June 11, 1973, as amended June 15, 1981, and Rule 206.4, added June 15, 1981.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE FEBRUARY 14, 1990

These proceedings before the discipline committee of the Institute of Chartered Accountants of Ontario were heard on February 14, 1990, the notice of motion brought by the member having already been heard and dealt with on November 7 and December 13 and 15, 1989.

Mr. Paul Farley attended on behalf of the professional conduct committee and Mr. Donald Wayne Brown attended with his counsel, Mr. Joseph Steiner.

At the outset of the hearing the professional conduct committee withdrew the charges that had been filed on November 7, 1989 and replaced them with new charges, which were filed as an exhibit. There were two new charges laid, one under Rule 206.2 and the other under Rule 206.4 of the Rules of Professional Conduct, to both of which Mr. Brown pleaded guilty.

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

An agreed statement of facts, signed by the member and by counsel for the professional conduct committee, and an extensive document brief, were filed as exhibits.

Based on the evidence submitted in the agreed statement of facts and document brief, which supported both charges, and the member's plea of guilty to those charges, the discipline committee found Mr. Brown guilty of professional misconduct on the two charges laid.

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

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Brown be reprimanded in writing by the chairman of the hearing.
2. THAT Mr. Brown be and he is hereby charged costs of \$18,600, to be remitted to the Institute within sixty (60) days from the date this Decision and order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Brown'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.

4. THAT in the event Mr. Brown fails to comply with the requirement of paragraph 2 of this Order within the time period therein specified, he shall thereupon be suspended from the rights and privileges of membership in the Institute, and notice of his suspension, disclosing his name, shall be given in the manner specified in paragraph 3 hereof.
5. THAT in the event Mr. Brown is suspended pursuant to paragraph 4 hereof, the suspension shall terminate upon compliance with the term of the order in respect of which he was suspended, provided that he complies within thirty (30) days from the date of his suspension.
6. THAT in the event Mr. Brown fails to terminate suspension within thirty (30) days, 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 3 hereof.

Briefly, the reasons for the discipline committee's sanctions are as follows:

- (a) The committee is of the view that a reprimand is necessary as a deterrent to the member charged and to stress the unacceptability of his conduct as a chartered accountant.
- (b) During the hearing, counsel for the professional conduct committee indicated that the problems encountered in the audit in respect of which the charges were laid were an aberration, since all other information suggested that the member was a fully competent practitioner. The discipline committee felt that rehabilitation was not an issue in this case and that compulsory attendance at professional development courses was not necessary.
- (c) The imposition of costs is appropriate in this case. The costs of the investigator from the date the first set of charges were laid amount to \$13,500. The balance of the costs reflect the usual charge of \$1,500 per hearing day, for the three and a half days of the hearing.
- (d) The discipline committee has ordered publicity including disclosure of the member's name both as a specific deterrent to the member charged and as a general deterrent to all members. In addition, the discipline committee considers publicity necessary to demonstrate to the public that the profession does regulate itself so as to retain public confidence in the profession's ability to self-govern.

DATED AT TORONTO, THIS 20th DAY OF MARCH, 1990
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

W.A. MOORHEAD, FCA

P. RAYSON, CA
D.P. SETTERIGNTON, CA
L.L. WORTHINGTON, CA
B. BOWDEN