

Donald Ross Hendry: Summary, as Published in *CheckMark*

Donald Ross Hendry, of Burlington, was found guilty of a charge under Rule 203.2 of failing to cooperate in the attempted inspection of his practice. After being charged, but prior to the hearing, he did cooperate with practice inspection. At the hearing, Mr. Hendry advanced certain mitigating circumstances. Taking them into account, the discipline committee reprimanded Mr. Hendry in writing but did not order additional sanctions.

CHARGE(S) LAID re Donald Ross Hendry

The Professional Conduct Committee hereby makes the following charges against, Donald R. Hendry, CA, a member of the Institute:

1. THAT, the said Donald R. Hendry, in or about the period May 2, 1995 to May 7, 1997, failed to cooperate with officers, servants or agents of the Institute who were appointed to arrange or conduct a practice inspection, contrary to Rule 203.2 of the rules of professional conduct.

Dated at Toronto, this 7th day of May, 1996

JENNIFER L. FISHER, CA – CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Donald Ross Hendry

DECISION AND ORDER IN THE MATTER OF: A charge against **DONALD ROSS HENDRY, CA**, a member of the Institute, under **Rule 203.2** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE DECEMBER 12, 1996

DECISION

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Donald Ross Hendry guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Hendry be reprimanded in writing by the chair of the hearing.
2. THAT notice of this Decision and Order, disclosing Mr. Hendry=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*.

DATED AT TORONTO THIS 17TH TH DAY OF DECEMBER, 1996
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Donald Ross Hendry

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: A charge against **DONALD ROSS HENDRY, CA**, a member of the Institute, under **Rule 203.2** of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE DECEMBER 12, 1996

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on September 25 and December 12, 1996 to hear a charge of failure to co-operate in a practice inspection, contrary to Rule 203.2 of the rules of professional conduct. The charge was brought by the professional conduct committee against Mr. Donald Ross Hendry, CA. Mr. Hendry pleaded not guilty to the charge.

The professional conduct committee was represented by Ms. C. O'Donohue. Mr. Hendry represented himself. He confirmed for the record that he was aware that he had the right to be represented by counsel.

The determination and sanctions imposed were made known at the hearing. These are the written reasons for the decision and order that has already been sent to the parties.

DECISION ON THE CHARGES

Facts

Counsel for the professional conduct committee filed affidavits from Ms. Jo Anne Olafson, CA, associate director of standards enforcement at the Institute, and Mr. Grant F. Dickson, FCA, director of practice inspection at the Institute, and a document brief. The panel also heard evidence from Mr. Dickson.

Mr. Hendry had been informed, by a letter from Mr. Dickson dated May 2, 1995, that his practice had been randomly selected for practice inspection. He was requested, in this letter, to provide certain information so that it could be determined if an inspection was appropriate. Despite this, and a subsequent reminder on June 30, 1995, Mr. Hendry did not respond, as a result of which the matter was referred to the professional conduct committee.

In a letter dated August 29, 1995, Mr. Hendry indicated to Ms. Olafson that he would supply the required information within the next few days. In a letter dated October 30, 1995, Ms. Olafson notified Mr. Hendry that the information still had not been received. Correspondence and telephone conversations continued between the Institute and Mr. Hendry, but it was not until May 7, 1996 that Mr. Hendry sent some of the information requested, and not until the day before the hearing, September 24, 1996, after 5 p.m., that he sent the remainder.

Mr. Hendry gave evidence in his own defence. During the period in question he had problems with medication that was being prescribed for his diabetes, underwent bypass surgery with complications, and contended with depression and lack of concentration. Both his physical and

mental health problems have been treated and, as of September 25, 1996, he indicated that he was on the way to recovery.

Conclusion

In reaching its conclusion on December 12, 1996, the panel noted that:

- the charge was that Ain or about the period May 2, 1995 to May 7, 1996";
- Mr. Hendry had not cooperated in any significant way during that period; and
- Mr. Hendry's cooperation only seriously began on September 24, 1996.

The panel concluded that what Mr. Hendry had been asked by the Institute to do was not unfair or unreasonable, particularly since Mr. Hendry stated that he had previously undergone practice inspection and that he believed that it was a helpful experience. In addition, based on the evidence about when Mr. Hendry promised to provide the requested information, and what that information was, the panel concluded that the requirement was not so onerous that Mr. Hendry, in spite of his health problems, should be excused from complying with the requests made.

Therefore, the panel determined that Mr. Hendry had breached the rule and was guilty of the charge, since the evidence established that he had failed to co-operate during the relevant period.

THE ADJOURNMENT

On September 25, 1996, after Ms. O=Donohue and Mr. Hendry had presented their cases, but before deliberating on the issue of guilt or innocence, the panel, of its own volition, adjourned the hearing. At that time, the panel had considerable concern that, if Mr. Hendry was unable to respond to a relatively simple request for information from the Institute, he also might not have been able to respond appropriately to requests from his clients during the period. The panel concluded that the best way to ensure Mr. Hendry's continued cooperation with practice inspection -- and thus provide it with some evidence that Mr. Hendry had properly served his clients -- was to adjourn before a determination of guilt or innocence was made.

On December 12, 1996, the hearing reconvened so that the panel could make its findings and, if appropriate, its order on sanctions. At this time, the panel heard a submission from Mr. P.F. Farley, senior counsel for the professional conduct committee, that the issue of Mr. Hendry=s continued cooperation in the practice inspection process was not germane to a finding of guilt or innocence, since the charges specified a time period that had passed before the hearing began on September 12.

The panel, while accepting the essence of Mr. Farley=s arguments, believed that the adjournment was appropriate and that it had a legitimate interest in Mr. Hendry=s continuing cooperation. If Mr. Hendry had failed to continue to cooperate, it could have been considered prima facie evidence of his lack of concern for his clients, and thus for the protection of the public, which is one of the CA profession=s primary responsibilities. In fact, during Ms. O=Donohue=s submission on sanctions, the panel heard that the practice inspection in question had been completed during the adjournment, and that no serious deficiencies had been identified. This evidence that Mr. Hendry had, despite his health problems during the period, continued to provide acceptable service to his clients, was taken into consideration by the panel in determining the appropriate sanctions.

SANCTIONS ORDER

Mr. Hendry not being present on December 12 when the panel considered sanctions, the panel heard Ms. O'Donohue's submission before deliberating and making its order.

The panel wrestled with the question of publication, and recalled Ms. O'Donohue to hear submissions specifically on the issues of a fine and publication. As the root cause of Mr. Hendry's failure to cooperate was his health, and he is now receiving appropriate medical treatment, the panel concluded that Mr. Hendry did not need to be specifically deterred from similar misconduct in the future, or that the panel needed to make an order that had as its objective Mr. Hendry's rehabilitation. Therefore, the panel determined that a fine was neither necessary nor warranted.

The panel concluded that a reprimand, which would have been delivered orally had Mr. Hendry been present, was enough to help him complete his rehabilitation and remind him of his professional obligation to make whatever arrangements are necessary, if, by reason of his health, he finds himself in a similar situation in the future.

On the issue of giving notice of the panel's decision and order, the panel concluded that this was a general deterrent, intended to inform other chartered accountants that not cooperating with practice inspection is a breach of the rules of professional conduct and will not be condoned. Consequently, the panel ordered that notice be given in the usual way.

DATED AT TORONTO THIS DAY OF FEBRUARY, 1997
BY ORDER OF THE DISCIPLINE COMMITTEE

F.A. DROZD, FCA - CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

H.B. BERNSTEIN, CA
C.J. BURKE, FCA
B.M. BYRNE, CA
P.A. GOGGINS, CA
R.W. WARKENTIN (Public representative)