

## **Duncan Ernest Wilfred Rapier: Summary, as Published in *CheckMark***

**Duncan Ernest Wilfred Rapier**, of Toronto, was found guilty of a charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest. The charge arose from Mr. Rapier's criminal conviction in the state of Florida of conspiracy to transfer stolen securities in interstate and foreign commerce. He was fined \$10,000 and expelled from the Institute. Mr. Rapier's appeal of the discipline committee's decision was dismissed by the appeal committee.

## **CHARGE(S) LAID re Duncan Ernest Wilfred Rapier**

The Professional Conduct Committee hereby makes the following charges against Duncan E.W. Rapier, CA, a member of the Institute:

1. THAT, the said Duncan E.W. Rapier, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that on or about April 21, 1993, he was convicted by the United States District Court, Southern District of Florida, of a criminal offence, namely conspiracy to transfer in interstate and foreign commerce stolen securities, contrary to Rule 201.1 of the rules of professional conduct.

Dated at Toronto this 11th day of July, 1996.

NICHOLAS M. HODSON, CA - DEPUTY CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

## **DISCIPLINE COMMITTEE re Duncan Ernest Wilfred Rapier**

**DECISION AND ORDER IN THE MATTER OF:** A charge against **DUNCAN ERNEST WILFRED RAPIER, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

### **DECISION AND ORDER MADE JANUARY 17, 1997**

#### **DECISION**

THAT, having seen and considered the evidence, and having heard the plea of guilty to the charge, the Discipline Committee finds Duncan Ernest Wilfred Rapier guilty of the charge.

#### **ORDER**

IT IS ORDERED in respect of the charge:

1. THAT Mr. Rapier be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Rapier be and he is hereby fined the sum of \$10,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Rapier be and he is hereby expelled from the rights and privileges of membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Rapier=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;
  - (c) by publication in *CheckMark*; and
  - (d) by publication in *The Globe and Mail* pursuant to Bylaw 575(3).
5. THAT Mr. Rapier be and he is hereby ordered to surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

DATED AT TORONTO THIS 23RD DAY OF JANUARY, 1997  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

## **DISCIPLINE COMMITTEE re Duncan Ernest Wilfred Rapier**

**REASONS FOR THE DECISION AND ORDER IN THE MATTER OF:** A charge against **DUNCAN ERNEST WILFRED RAPIER**, 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 17, 1997**

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario convened on January 17, 1997 to hear a charge of professional misconduct made against Duncan Ernest Wilfred Rapier.

The professional conduct committee was represented by Ms. Deborah McPhadden. Mr. Rapier was present and represented by his counsel, Mr. Norman Ronka.

Mr. Rapier pleaded guilty to the following charge laid by the professional conduct committee:

That, the said Duncan E.W. Rapier, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that on or about April 21, 1993, he was convicted by the United States District Court, Southern District of Florida, of a criminal offence, namely conspiracy to transfer in interstate and foreign commerce stolen securities, contrary to Rule 201.1 of the rules of professional conduct.

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

In presenting its case, the professional conduct committee filed as an exhibit a document brief, which contained a certified copy of the judgment in the criminal case of United States of America v. Duncan Rapier, a certified copy of the superseding indictment referred to in the judgment, a transcript of Mr. Rapier's guilty plea in the case on April 21, 1993, and a transcript of the sentencing proceeding held on June 22, 1993.

The criminal charge to which Mr. Rapier pleaded guilty related to his role in a conspiracy to sell certain of 292 bearer bonds, each with a face value of one million (1,000,000) British pounds (approximately \$ 1.7 million U.S. dollars), which he knew had been stolen. As part of the conspiracy, he offered, with his co-conspirators, to "transport, transmit, and transfer in interstate and foreign commerce certain of the 292 stolen bearer bonds".

Based on the evidence filed, and the fact that the criminal conviction amounted to *prima facie* evidence of Mr. Rapier's guilt of the Rule 201.1 charge, and based upon his plea of guilty to the Rule 201.1 charge, the discipline committee found Mr. Rapier guilty of the charge laid against him by the professional conduct committee.

The discipline committee then heard the submissions with respect to sanction from both parties.

Mr. Rapier testified on his own behalf, and filed two letters of reference attesting to his character. He stated that he was 76 years old, fully retired and living in the islands with his wife.

During his testimony, Mr. Rapier stated that the entire operation was a "sting" perpetrated by the FBI, and that, in fact, there never were any stolen bonds, and only copies of bonds were ever seen.

The transcript of April 21, 1993 indicated that Mr. Rapier attended a meeting with prospective buyers of the stolen bonds. He advised them that the bonds were in the possession of the Irish Republican Army, and that he and his co-conspirators wanted to sell them at a discount. These would-be buyers turned out to be undercover FBI agents.

Mr. Rapier testified before this panel that he pleaded guilty to the indictment only because, after five months in a local Florida jail, he could no longer stand the living conditions.

The transcript indicates that the criminal court judge carefully made sure that Mr. Rapier knew exactly what it was that he was pleading guilty to, and that his statements were being made voluntarily. Mr. Rapier stated to the discipline committee that his statements made in the Florida court were rehearsed, and he recanted this plea of guilty made in that court.

Counsel for the professional conduct committee asked that the member be expelled. Counsel for Mr. Rapier requested that he be allowed to resign, since this was a rare case and further humiliation would serve no purpose. After hearing the submissions, the discipline committee deliberated and then made the following order:

### **Order**

It is ordered in respect of the charge:

1. THAT Mr. Rapier be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Rapier be and he is hereby fined the sum of \$10,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Rapier be and he is hereby expelled from the rights and privileges of membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Rapier'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;
  - (c) by publication in *CheckMark*; and
  - (d) by publication in *The Globe and Mail* pursuant to Bylaw 575(3).
5. THAT Mr. Rapier be and he is hereby ordered to surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

The reasons for the discipline committee's order are set out below.

In determining the appropriate sanction, the committee considered the three general principles of sentencing, namely rehabilitation, general deterrence and specific deterrence. The question of rehabilitation was not an issue in the case, since Mr. Rapier's misconduct appears to have been an aberration, and since he is 76 years old and fully retired.

The committee concluded that deterrence, particularly general deterrence, was of the utmost importance in this case. Mr. Rapier pleaded guilty to a serious crime which involved moral turpitude. He recanted this plea of guilty before the discipline committee, but that is not sufficient to deal with the fact of the conviction by a court of competent jurisdiction. He offered no proof, other than his own testimony, that he had fallen victim to fraud or collusion. This falls short of the required standard of proof. If the committee were to accept such evidence alone as proof of fraud or collusion, then decisions of courts, in jurisdictions where the rule of law is respected and followed, would become meaningless in discipline proceedings. Accordingly, the discipline committee concluded that it had to impose a sanction appropriate to a serious crime involving moral turpitude.

### **Reprimand**

The committee was of the view that a reprimand in writing from the chair of the hearing would be appropriate to stress to Mr. Rapier the unacceptability of his conduct as a chartered accountant.

### **Fine**

The professional conduct committee asked for a fine to be imposed of \$15,000. The discipline committee agreed that a fine was appropriate in this case, as a general deterrent to like-minded members, and as a demonstration to the public that this type of professional misconduct will not be tolerated. There was no specific evidence presented to the committee to persuade it that Mr. Rapier could not afford to pay the fine. On one occasion he stated that he was a poor man, but on another he stated that he owned property in the islands. The committee felt a \$10,000 fine in this case would be appropriate as a general deterrent.

### **Expulsion**

The principle of general deterrence is of utmost importance in this case. The committee felt that allowing Mr. Rapier to resign would not act as a general deterrent, and therefore ordered that he be expelled from membership in the Institute.

### **Notice**

The committee agreed that Mr. Rapier had paid a heavy price for his misconduct. He had been convicted of a criminal offence, spent time in jail, and been humiliated. However, as the disciplinary process of a self-governing professional body must be viewed by its members and the public as an open process, the committee felt that the principle of general deterrence would not be served without giving proper notice of this hearing, to include disclosure of the member's name. The committee did not consider there to be rare and unusual circumstances in this case to justify withholding the member's name from the notice to be given, including the notice required under Bylaw 575(3), which the committee concluded should be by way of publication in *The Globe and Mail*.

### **Surrender of Certificate**

As is usual in cases of expulsion, the member was ordered to surrender his certificate of membership in the Institute.

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

D.P. SETTERINGTON, CA - DEPUTY CHAIR  
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

E.R. ARCHIBALD, CA  
B.M. BYRNE, CA  
J.M. MULHALL, CA  
W.L. WOOD, CA  
N.C. AGARWAL (Public representative)

## **APPEAL COMMITTEE re Duncan Ernest Wilfred Rapier**

**REASONS FOR THE DECISION AND ORDER IN THE MATTER OF:** An appeal by **Duncan Ernest Wilfred Rapier**, a member of the Institute, of the decision and order of the discipline committee made on January 17, 1997, pursuant to the bylaws of the Institute, as amended.

### **DECISION AND REASONS FOR DECISION MADE MARCH 23, 1998**

These proceedings before a panel of the appeal committee of the Institute of Chartered Accountants of Ontario were convened on March 23, 1998.

Ms. Deborah McPhadden attended on behalf of the professional conduct committee, and Mr. Duncan Ernest Wilfred Rapier was present without counsel. Mr. Rapier acknowledged that he had been advised of his right to be represented by counsel.

Mr. Rapier's appeal was confined to the issue of the fine levied pursuant to the order of the discipline committee made on January 17, 1997. Mr. Rapier asked that the fine be set aside or, alternatively, that it be substantially reduced.

After reviewing the documentation and hearing the submissions of all parties, this panel of the appeal committee confirmed the decision of the discipline committee made on January 17, 1997. The parties were advised that written reasons would follow in due course, and these are those reasons.

### **BACKGROUND**

The discipline committee found Mr. Duncan Rapier guilty of a charge of professional misconduct, contrary to Rule of Professional Conduct 201.1.

Mr. Rapier had pleaded guilty to the charge. The document filed as an exhibit before the discipline committee clearly demonstrated that Mr. Rapier was convicted of a criminal offense in the state of Florida on April 21, 1993. The charge of which he was convicted related to his role in a conspiracy to sell certain of 292 bearer bonds which he knew to have been stolen.

After finding the member guilty of the charge, the discipline committee heard submissions as to sanction from both parties, and, after due deliberation, made the following order:

### **ORDER**

IT IS ORDERED in respect of the charge:

1. THAT Mr. Rapier be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Rapier be and he is hereby fined the sum of \$10,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.



3. THAT Mr. Rapier be and he is hereby expelled from the rights and privileges of membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Rapier'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;
  - (c) by publication in *CheckMark*; and
  - (d) by publication in *The Globe and Mail* pursuant to Bylaw 575(3).
5. THAT Mr. Rapier be and he is hereby ordered to surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

Mr. Rapier in his appeal stated that:

- he has no financial means to pay the fine imposed;
- at 76 years of age, his chances of employment are negligible;
- there was no financial loss to anyone resulting from the conduct which led to his criminal conviction;
- his criminal conviction was the direct result of an FBI “sting” operation; and
- he has already served six months in U.S. prison for his conviction.

After considering the submissions and deliberating, the appeal committee dismissed Mr. Rapier’s appeal and confirmed the decision of the discipline committee, for the reasons set out below.

## REASONS

Mr. Rapier submitted to the appeal committee that he pleaded guilty to the criminal offense in Florida in order to be released from jail, which he found very difficult to endure, particularly due to the fact that he was 72 or 73 years old at the time. Mr. Rapier contended that he had been the victim of a “sting” operation. He maintained his innocence of the criminal offense, and stated that he was persuaded to plead guilty to the criminal offense as a means to expedite his release from jail and spare his family further expense and embarrassment.

Mr. Rapier was seeking to set aside the \$10,000 fine which had been imposed by the discipline committee, on the grounds of his innocence, his advanced age, and his inability to raise the necessary amount to pay the fine because he was retired.

At the discipline hearing, Ms. McPhadden submitted that the professional conduct committee had charged Mr. Rapier with breaching Rule 201.1 on the basis of his conviction of the criminal offense in Florida, and that the committee relied on the rebuttable presumption provided in Rule 201.2 that Mr. Rapier was in breach of Rule 201.1 by virtue of this conviction. Mr. Rapier was represented by counsel at the discipline committee hearing, and pleaded guilty to the charge under Rule 201.1. At that time, he was advised that he could be found guilty of the charge on the basis of his guilty plea alone. The professional conduct committee presented evidence to prove the criminal conviction, and Mr. Rapier did not present evidence to rebut the presumption contained in Rule 201.2 that, by virtue of this criminal conviction, he had failed to maintain the good reputation of the profession and its ability to serve the public interest, and had therefore breached Rule 201.1.

Testifying only as to sanction, Mr. Rapier told the discipline committee that he had pleaded guilty to the criminal offense only to be released from jail. The discipline committee determined, however, that his appearing before it and recanting his guilty plea was not sufficient to enable it to disregard the conviction made by a court of competent jurisdiction. The committee concluded that of the three general principles of sentencing, general deterrence was of the utmost importance in this case involving a serious crime of moral turpitude. Ms. McPhadden submitted to the appeal committee that the sanction imposed by the discipline committee was within the range of sanctions appropriate for this type of offense.

The issue before the appeal committee was whether or not the discipline committee, upon consideration of all the evidence before it, properly exercised its discretion and imposed a sanction within an appropriate range of sanctions given the facts of this particular case. Unless there was an error in principle made, or unless the sanction imposed was not within the appropriate range of sanctions consistent with earlier cases, the appeal committee determined that it should not disturb the penalty and substitute its judgment for that of the discipline committee.

After considering the submissions made, the appeal committee concluded that the discipline committee properly considered and applied the principles of sentencing, and imposed a sanction within the range of sanctions appropriate for a breach of Rule of Professional Conduct 201.1. Accordingly, the appeal committee determined there to be no basis upon which to vary the sanction imposed on Mr. Rapier, and, as a result, dismissed his appeal and confirmed the order of the discipline committee.

DATED AT TORONTO, THIS  
BY ORDER OF THE APPEAL COMMITTEE

DAY OF AUGUST, 1998

D.L. CHANT, FCA – CHAIR  
THE APPEAL COMMITTEE

MEMBERS OF THE PANEL

E.W. CONLIN, CA  
B.N. GORY, FCA  
F.C. HILL, FCA  
M.B. MARTENFELD, FCA  
F.J. WELSH, FCA  
V. INGLIS (Public representative)