

Edward George Humphrey: Summary, as Published in *CheckMark*

Edward George Humphrey, of Ajax, was found guilty of a charge under Rule 203.2 of failing to cooperate in the attempted inspection of his practice. He was fined \$2,000 and ordered to cooperate with practice inspection within a specified time. As a result of his failure to comply with the order, Mr. Humphrey was expelled from the Institute.

CHARGE(S) LAID re Edward George Humphrey

The Professional Conduct Committee hereby makes the following charge against Edward G. Humphrey, CA, a member of the Institute:

1. THAT, the said Edward G. Humphrey, in or about the period March 12, 1998 to May 11, 1999, failed to co-operate with officers, servants or agents of the Institute who were appointed to arrange or conduct an inspection of his practice, contrary to Rule 203.2 of the rules of professional conduct.

Dated at Toronto this 11th day of May, 1999.

UWE MANSKI, FCA – DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Edward George Humphrey

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

DECISION AND ORDER MADE AUGUST 25, 1999

DECISION

THAT, having seen and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Humphrey, pursuant to Institute Bylaw 560, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to the charge, the Discipline Committee finds Edward George Humphrey guilty the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Humphrey be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Humphrey be and he is hereby fined the sum of \$2,000, to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Humphrey comply with the letter from the director of practice inspection dated September 28, 1998 within seven (7) days from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Humphrey'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*.
5. THAT in the event Mr. Humphrey fails to comply with the requirements of this Order, 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 above, and by publication in a local Ajax newspaper and *The Globe and Mail*.

DATED AT TORONTO THIS 30TH DAY OF AUGUST, 1999
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Edward George Humphrey

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

REASONS FOR THE DECISION AND ORDER MADE AUGUST 25, 1999

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on August 25, 1999 to hear evidence concerning a charge brought against Edward George Humphrey, CA.

A copy of the decision and order was sent to Mr. Humphrey, and these are the reasons for that decision and order.

At 10:00 a.m., the time at which the hearing was scheduled to commence, Mr. Humphrey was not present in the Council Chamber, and the secretary to the discipline committee reported that he was not in the common area outside. Shortly after 10:15 a.m., the chair decided to convene the hearing.

The professional conduct committee was represented by Ms. Deborah McPhadden. The discipline committee reviewed the Affidavits of Service of the Notice of Assignment Hearing and Notice of Hearing, which were filed as exhibits. The committee was satisfied that Mr. Humphrey had received proper notice of the hearing, and determined to proceed with the hearing in his absence pursuant to Institute Bylaw 560. A plea of not guilty was then entered on behalf of Mr. Humphrey to the following charge laid against him by the professional conduct committee:

THAT, the said Edward G. Humphrey, in or about the period March 12, 1998 to May 11, 1999, failed to co-operate with officers, servants or agents of the Institute who were appointed to arrange or conduct an inspection of his practice, contrary to Rule 203.2 of the rules of professional conduct.

At 10:30 a.m., the hearing was interrupted and the chair was presented with a letter which had been faxed to the secretary of the discipline committee earlier that morning by Mr. Humphrey, requesting that the hearing be rescheduled to September. The letter, which was filed as an exhibit, indicated that the adjournment would allow Mr. Humphrey time to consult with counsel, but gave no explanation as to why the member was not present at the hearing, or where he was. While the letter did not have an address, it showed the name of a hotel with a "905" fax number. The committee reviewed the letter and, after consulting with the committee, the chair ruled that the hearing would continue.

DECISION ON THE CHARGE

In presenting her case, counsel for the professional conduct committee filed as an exhibit a document brief, and affidavits from Mr. Grant Dickson, director of practice inspection, and Ms. Joanna Maund, director of standards enforcement. The exhibits established that:

- on March 12, 1998, the director of practice inspection informed Mr. Humphrey that a practice inspection was to be scheduled, and requested certain information relating to Mr. Humphrey's practice;
- when Mr. Humphrey failed to respond, the director of practice inspection sent a second request for the information on June 16, 1998, to which Mr. Humphrey did not respond;
- on July 30, 1998, the director of practice inspection sent by registered mail a final request for the information to be submitted by August 20, 1998;
- Mr. Humphrey responded by sending in Form A, his practitioner's client listing, dated August 19, 1998;
- on September 28, 1998, the director of practice inspection sent a letter requesting that certain files named in Form A be forwarded to the Institute no later than October 19, 1998;
- on November 13, 1998, the director of practice inspection sent a final request for the files to be submitted before December 4, 1998;
- on December 4, 1998, Mr. Humphrey requested an extension to December 15, 1998;
- on January 12, 1999, the director of practice inspection requested that the professional conduct committee take appropriate action, since the conduct of Mr. Humphrey appeared to be in breach of Rule of Professional Conduct 104;
- Mr. Humphrey told the director of standards enforcement, by letter of February 9, 1999, that he would submit the files prior to February 28, 1999, with no result;
- Ms. McPhadden phoned Mr. Humphrey to advise him that the matter would be going to the professional conduct committee at its meeting on May 11, 1999;
- Mr. Humphrey advised Ms. McPhadden that he would submit the files to Mr. Dickson.

Ms. McPhadden advised the discipline committee that no files had as yet been submitted by Mr. Humphrey.

After considering the evidence, and the submissions made by Ms. McPhadden, the discipline committee, upon deliberation, found that the allegations as to Mr. Humphrey's failure to cooperate had been proven, and he was found guilty of the charge.

ORDER AS TO SANCTION

The committee then heard the submissions of the professional conduct committee with respect to sanction, and, upon further deliberation, made the following order:

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Humphrey be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Humphrey be and he is hereby fined the sum of \$2,000, to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.

3. THAT Mr. Humphrey comply with the letter from the director of practice inspection dated September 28, 1998 within seven (7) days from the date this Decision and Order becomes final under the bylaws.

4. THAT notice of this Decision and Order, disclosing Mr. Humphrey'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*.
5. THAT in the event Mr. Humphrey fails to comply with the requirements of this Order, 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 above, and by publication in a local Ajax newspaper and *The Globe and Mail*.

In considering the appropriate sanction, the committee considered the three general principles of sentencing, namely rehabilitation, general deterrence and specific deterrence. In light of the fact that the practice inspection program is fundamentally important to maintaining the standards of the profession, the principle of general deterrence is relevant to this case.

Usually, a sanction designed to specifically deter a member from repeating the conduct which brings him before the discipline committee serves to further the principle of rehabilitation. However, it is difficult to fashion a sanction which will specifically deter and help rehabilitate a member who appears to be ungovernable. While we do not know whether Mr. Humphrey is unwilling or unable to be governed, the request made of him by the director of practice inspection was not an onerous request. Accordingly, a sanction which gives Mr. Humphrey a further opportunity to cooperate and prove that he is governable, coupled with the consequence of expulsion for failure to cooperate, provides an opportunity for rehabilitation, and also addresses the need to deter this type of behaviour.

Reprimand

The committee believes that a reprimand in writing from the chair of the hearing will stress to Mr. Humphrey the unacceptability of his conduct as a chartered accountant.

Fine

Ms. McPhadden asked that a fine be levied against Mr. Humphrey in the amount of \$2,500, submitting that it was the view of the professional conduct committee that higher fines in cases of failing to cooperate should be levied in an attempt to curb the increasing incidence of this type of offence. The discipline committee agreed that a fine was appropriate in this case, both as a general deterrent to like-minded members and a specific deterrent to Mr. Humphrey, and as a demonstration to the public of the profession's intolerance of the type of behaviour demonstrated by this member. The committee did not, however, consider it appropriate to make an example of Mr. Humphrey by levying a higher fine than has generally been levied in cases of this type, in the absence of advance notification. With the issuance of these reasons, the membership is now on notice that higher fines may be ordered in future in cases involving failure to cooperate with the Institute's regulatory functions.

Cooperation with Practice Inspection

The committee agreed with the submission of counsel for the professional conduct committee that Mr. Humphrey should be allowed seven days from the date of the decision and order becoming final under the bylaws to cooperate with practice inspection. This was considered adequate time for Mr. Humphrey to respond, in view of the fact that the order will not become

final until after the expiry of a thirty day appeal period following Mr. Humphrey's receipt of these reasons.

Notice

The giving of notice of the committee's decision and order, disclosing Mr. Humphrey's name, is, in the opinion of the committee, a general deterrent. It is the discipline committee's responsibility to ensure that members of the profession and the general public are made aware that failure on the part of members to cooperate with the regulatory processes of the Institute will result in the imposition of serious sanctions.

Failure to Comply

The committee's order requires Mr. Humphrey to cooperate with practice inspection within a specified time. He has been given many previous opportunities to cooperate, and this is the last one. Failure to comply with any of the requirements of the order within the prescribed time periods will result in Mr. Humphrey's immediate expulsion from membership in the Institute.

DATED AT TORONTO THIS DAY OF OCTOBER, 1999
BY ORDER OF THE DISCIPLINE COMMITTEE

D.P. SETTERINGTON, CA – CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

E.R. ARCHIBALD, CA
D.W. DAFOE, FCA
N.A. MACDONALD EXEL, CA
S.W. SALTER, CA
B.A. YOUNG (Public representative)