

Edward Bryce Quon: Summary, as Published in *CheckMark*

Edward Bryce Quon, of Etobicoke, 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; a charge under Rule 202 of failing to perform his professional services with integrity and due care; and a charge under Rule 203.2 of failing to cooperate in a professional conduct committee investigation. While acting as a trustee in bankruptcy, Mr. Quon removed amounts of money from estate trust accounts prior to entitlement, or without proper authorization, and provided inaccurate or misleading information to inspectors. He failed to administer various estates properly, or within reasonable time periods, and consistently failed to act in the best interests of estate beneficiaries, by leaving things undone, or not realizing all the assets that he could have realized. Mr. Quon failed to cooperate with the investigator for the professional conduct committee, despite attending a meeting of that committee at which he indicated he would cooperate. There was compelling evidence that, over a period of years, Mr. Quon had been made aware of the need to substantially improve his practice, but had not done so. He was fined \$15,000 and expelled from the Institute. Mr. Quon's appeal of the discipline committee's decision and order was dismissed by the appeal committee.

CHARGE(S) LAID re Edward Bryce Quon

The Professional Conduct Committee hereby makes the following charges against Edward B. Quon, CA, a member of the Institute:

1. That, the said Edward B. Quon, CA, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the rules of professional conduct in that:
 - (a) in or about, 1994, while

Dated at Toronto this 26th day of September, 1997

EDWARD M. REITEROWSKI, CA –ACTING/DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Edward Bryce Quon

DECISION AND ORDER IN THE MATTER OF: Charges against **EDWARD BRYCE QUON, CA**, a member of the Institute, under **Rules 201.1, 202 and 203.2** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE SEPTEMBER 17, 1998

DECISION

THAT, having seen, heard and considered the evidence, various particulars of the charges having been withdrawn or amended as stipulated below, and having heard the plea of guilty to the charges as amended except to particulars (d) and (f) of charge No. 1, the Discipline Committee finds Edward Bryce Quon:

- guilty of charge No. 1, as amended, in that particulars (c), (e) and (g) have been proven; particulars (d) and (f) not having been proven, and particulars (a) and (b) having been withdrawn;
- guilty of charge No. 2, as amended, in that particulars (a), (c), (e), (f) as amended, (h) as amended, (j), (l), (m) as amended, (n) as amended, (o) as amended, (p) as amended, (q), (r) as amended, (t), (w), (x) as amended, (y), (z) and (aa) as amended have been proven; particulars (b), (d), (g), (i), (k), (s), (u) and (v) having been withdrawn; and
- guilty of charge No. 3.

ORDER

IT IS ORDERED in respect of the charges, as amended:

1. THAT Mr. Quon be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Quon be and he is hereby fined the sum of \$15,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Quon be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Quon'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*.
5. THAT Mr. Quon 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 2nd DAY OF OCTOBER, 1998
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Edward Bryce Quon

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **EDWARD BRYCE QUON, CA**, a member of the Institute, under **Rules 201.1, 202 and 203.2** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE SEPTEMBER 17, 1998

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on September 15, 16 and 17, 1998 to hear evidence concerning three charges brought against Edward Bryce Quon, C.A.

The professional conduct committee was represented by Mr. Brian Bellmore. Mr. Douglas McTavish represented Mr. Quon, who was present at the hearing.

At the commencement of the hearing, Mr. Bellmore indicated that he wished to withdraw or amend certain particulars of the three charges laid. Particulars (a) and (b) of charge No. 1 were withdrawn, and particulars (b), (d), (g), (i), (k), (s), (u) and (v) of charge No. 2 were withdrawn. Particulars (f), (h), (m), (n), (o), (p), (r), (x) and (aa) were amended.

Charge No. 1 alleged that Mr. Quon failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the rules of professional conduct. Charge No. 2 alleged that Mr. Quon, while acting as a trustee in bankruptcy, failed to perform his professional services with integrity and due care, contrary to Rule 202 of the rules of professional conduct. Charge No. 3 alleged that Mr. Quon, in or about the period December 1, 1995 to January 13, 1998, failed to cooperate with officers, servants or agents of the Institute appointed to arrange or conduct an investigation on behalf of the professional conduct committee, contrary to Rule 203.2 of the rules of professional conduct.

Mr. Quon pleaded not guilty to particulars (d) and (f) of charge No. 1. He pleaded guilty to the remaining particulars of charge No. 1, to all of the remaining particulars, as amended, of charge No. 2, and to charge No. 3, and confirmed that he understood that upon a plea of guilty, and upon that basis alone, he could be found guilty of the charges by the discipline committee.

Both counsel made opening statements, and explained the procedure they proposed to follow in the presentation of the evidence. With respect to the two particulars to which Mr. Quon had entered a plea of not guilty, the evidence was to be presented in the usual manner, including full cross-examination. The evidence with respect to the charges and particulars to which a plea of guilty had been entered would be somewhat truncated, with only limited cross-examination, intended not to challenge the member's guilt but only to help the panel assess the nature and extent of the misconduct.

Mr. McTavish made it clear to the panel that the position of Mr. Quon was only to challenge the two particulars of charge No. 1, involving moral turpitude, to which he had pleaded not guilty, and not to contest the other charges and allegations, which related to competency issues.

DECISION ON THE CHARGES

Counsel for the professional conduct committee called Aldis Makovskis, the professional conduct committee investigator, as a witness. Mr. Makovskis led the panel through a two volume document brief that had been filed as an exhibit, and related a number of the documents to the particulars of the charges. The thrust of the evidence presented pertaining to charge No. 1, with the exception of the two particulars to which the member had pleaded not guilty, was that Mr. Quon had removed amounts of money from estate trust accounts prior to entitlement, or without proper authorization, and had provided inaccurate or misleading information to inspectors.

The evidence with respect to the allegations set out in particulars (d) and (f) of charge No. 1, to which Mr. Quon had pleaded not guilty, established that in two files there had been shortfalls, one in the amount of \$60, and the other in the amount of \$300. There was some evidence which suggested that Mr. Quon might have received \$60 for hockey tickets, and \$300 for a laser level.

The evidence with respect to charge No. 2 established that Mr. Quon had not administered various estates properly, or within reasonable time periods, and that he had consistently failed to act in the best interests of the estate beneficiaries, by leaving things undone, or not realizing all the assets which he could have realized. The professional conduct committee's investigator had asked to review sixty-two files, only thirty-five of which were turned over by Mr. Quon. It was acknowledged that in twenty of the files turned over Mr. Quon's standard of practice was so deficient as to constitute professional misconduct.

With respect to the third charge, the evidence established that Mr. Quon did not cooperate with the investigator for the professional conduct committee, despite attending a meeting of that committee in December, 1996 at which he indicated he would cooperate. He had cooperated to a limited extent prior to then by making some of the requested files available to the investigator, but it was another five months after the December, 1996 meeting before there was further cooperation, and even then it was limited. The investigator was appointed in November, 1995, but, as a result of Mr. Quon's failure to cooperate, the professional conduct committee did not conclude its investigation for two years. The charges were not laid until February 9, 1998, and even as late as the hearing itself Mr. Quon had not delivered all the files which he had told the professional conduct committee he would deliver. In his evidence, Mr. Quon said he regretted not having cooperated with the investigator, and acknowledged that his responses had been minimal.

After hearing all the evidence and submissions on the charges, the panel deliberated, and found Mr. Quon not guilty of particulars (d) and (f) of charge No. 1, to which he had pleaded not guilty, and guilty of all the other particulars of the charges, to all of which he had pleaded guilty.

The panel found that there had been insufficient clear and cogent evidence presented to justify a finding of professional misconduct on either particular (d) or (f) of charge No. 1. It was clear that some money had not been accounted for, but the panel was not satisfied that the only reasonable explanation for this was that Mr. Quon had, in effect, stolen it.

ORDER AS TO SANCTION

Both parties were given an opportunity to call evidence with respect to sanction, and Mr. McTavish called Mr. Quon, as well as a number of character witnesses. Mr. Quon again said that he regretted his lack of cooperation with the professional conduct committee, and filed a written undertaking that he would retain certain individuals to ensure that his practice was brought up to the appropriate level, and would have his practice monitored by a person who would report to the professional conduct committee on an annual basis for three years.

Submissions on Sanction

At the conclusion of the evidence with respect to sanction, both counsel made submissions. It was common ground that Mr. Quon's standard of practice was unacceptable.

Mr. Bellmore's submissions focused on two main points. The first was that Mr. Quon had failed, for a period of over three years, to adopt and implement recommendations for the improvement of his practice made by the Superintendent of Bankruptcy. His second main point was that Mr. Quon had demonstrated since early 1996 that he was not governable by the Institute, as a result of which the principles of general and specific deterrence required that he be expelled. Mr. Bellmore indicated that the principle of rehabilitation could best be served by requiring Mr. Quon to apply for readmission to membership if and when he managed to rehabilitate himself in the future.

Mr. McTavish focussed on the principle of rehabilitation and its purpose in the discipline process, and emphasized that, despite his shortcomings, such as not cooperating, Mr. Quon was an honest man. He submitted that, while the standard of Mr. Quon's practice was not acceptable, the significant shortfalls in the practice arose during the period 1990 to 1994, and that even then there was no substantial wrongdoing.

The prosecution asked that Mr. Quon be reprimanded, fined \$5,000, and expelled from the Institute, with the usual publicity, including notice of expulsion in a newspaper distributed in the area in which Mr. Quon lived or practised. Mr. McTavish submitted that a reprimand and fine would achieve the required purposes of general and specific deterrence, and that an order incorporating the undertaking given by Mr. Quon would adequately protect the public while allowing him to rehabilitate himself. He submitted that this was not a case warranting expulsion.

Determination of Sanction

The first and fundamental issue with which the panel had to deal was whether or not this member could be rehabilitated. There was compelling evidence that, over a period of years, Mr. Quon had been made aware of the need to substantially improve his standard of practice, and that he had not done so in any substantial way. There was no persuasive evidence, indeed almost no evidence at all, that Mr. Quon was capable of rehabilitation.

Mr. Quon's failure to cooperate in the professional conduct committee investigation was prolonged and persistent. While at and immediately prior to the hearing Mr. Quon's counsel had made an effort to address this inexcusable default, the member's actions seemed calculated to prolong the period of time he could practice without addressing the serious concerns about his standard of practice. The panel concluded that Mr. Quon was unwilling or unable to be governed.

The principle of general deterrence was also discussed as a relevant consideration by the panel in its deliberations. Members of the Institute whose practices have been restricted by a regulating authority, such as the Superintendent of Bankruptcy in this case, and who do virtually nothing to address the serious deficiencies identified, and then stonewall the investigator appointed by the professional conduct committee to look into the deficiencies, should not expect to remain members of the Institute.

Mr. Quon tendered a written undertaking intended to address the issue of ensuring the public was properly served during his proposed period of rehabilitation. The problem the panel had with the undertaking was that there was no basis for concluding that Mr. Quon could or would

cooperate with the Institute and carry out the terms of the undertaking. Even at the time of the hearing, Mr. Quon had not delivered to the investigator the files he had promised to deliver.

After its deliberations, the panel made the following order:

ORDER

IT IS ORDERED in respect of the charges, as amended:

1. THAT Mr. Quon be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Quon be and he is hereby fined the sum of \$15,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Quon be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Quon'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*.
5. THAT Mr. Quon 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.

Reprimand

The panel was of the view that a reprimand in writing from the chair of the hearing would be appropriate as both a specific and general deterrent, to stress to Mr. Quon the unacceptability of his conduct as a chartered accountant.

Fine

The professional conduct committee asked for a fine to be imposed of \$5,000. The panel 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. As a deterrent, the panel concluded that a fine in the amount of \$15,000 would be more suitable in this case, and so ordered.

Expulsion

The panel determined that, having found little or no evidence that Mr. Quon could be rehabilitated, and having concluded that he was ungovernable, its only appropriate response was to order the member's expulsion.

Notice

The giving of notice, including publication, of the discipline committee's decision and order, disclosing Mr. Quon's name, is, in the opinion of the panel, a general deterrent. The discipline committee has a 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 self-regulatory functions of the Institute can result in serious consequences. An important factor in the governance of a profession is communication of the fact that it does not take breaches of its

bylaws and rules of professional conduct lightly. Accordingly, the panel ordered the giving of notice of these proceedings, including by way of newspaper publication of expulsion in *The Globe and Mail*, there having been presented no grounds to interfere with the application of Bylaw 575(3) in this regard.

Certificate of Membership

As in all cases of expulsion, it is important that Mr. Quon surrender his certificate of membership in the Institute, to which he is no longer entitled.

DATED AT TORONTO THIS DAY OF DECEMBER, 1998
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

B.M. BYRNE, CA
P.B.A. CLARKSON, CA
B.L. STEPHENS, CA
K. TSE, CA
B.A. YOUNG (Public representative)

APPEAL COMMITTEE re Edward Bryce Quon

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: An appeal by **EDWARD BRYCE QUON, CA**, a member of the Institute, of the Decision and Order of the discipline committee made on September 17, 1998, pursuant to the bylaws of the Institute, as amended.

DECISION AND REASONS FOR DECISION MADE APRIL 15, 1999

This panel of the appeal committee was convened on April 15, 1999 to hear an appeal filed by Mr. Edward Bryce Quon against paragraph 3 of the order of the discipline committee made on September 17, 1998, pursuant to which Mr. Quon was ordered expelled from membership in the Institute. The appellant was seeking to have the order of expulsion set aside and a period of suspension substituted.

The appellant was accompanied and represented by his counsel, Mr. Douglas McTavish. Mr. Brian Bellmore and Ms. Karen Mitchell attended for the professional conduct committee.

DECISION

After reviewing the decision and order and written reasons of the discipline committee, as well as the notice of appeal and other documents filed, and after hearing the submissions of both counsel, the appeal committee dismissed Mr. Quon's appeal and confirmed the decision and order of the discipline committee made on September 17, 1998.

The parties were informed of the appeal committee's decision, and were advised that written reasons for its decision would follow. These are those reasons.

REASONS FOR DECISION

Mr. McTavish advised the appeal committee at the outset of the hearing that Mr. Quon was not disputing the findings of guilt made by the discipline committee on the charges laid against him, but only the discipline committee's order expelling him from the Institute. He submitted to the appeal committee that the penalty of expulsion imposed by the discipline committee was too severe in all the circumstances of the case, and that the discipline committee erred in failing to apply the principle of rehabilitation, and failing to accept the member's filed undertaking as an appropriate instrument to govern his practice in the future. The undertaking filed by Mr. Quon at the discipline hearing was to the effect that he would engage a member of the Institute approved by the professional conduct committee to monitor and report on his practice, and would also engage an approved individual to wind up and dispose of all his files that were more than three years old.

The discipline committee's order was as follows:

ORDER

IT IS ORDERED in respect of the charges, as amended:

1. THAT Mr. Quon be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Quon be and he is hereby fined the sum of \$15,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Quon be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Quon'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*.
5. THAT Mr. Quon 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 issues before the appeal committee were whether or not the discipline committee, after considering all the evidence, properly considered the principles of sentencing and imposed a sanction within an appropriate range of sanctions given the facts of this particular case, and whether or not the appeal committee should interfere with the decision made by the discipline committee in the exercise of its discretion as to sanction.

Under Bylaw 530(3), the discipline committee has been given wide powers to impose sanctions on a member found in breach of the rules of professional conduct. In exercising its discretion to impose an appropriate sanction, the discipline committee's responsibility is to act fairly in the application of the principles of sentencing, in a manner consistent with earlier cases.

The discipline committee of a professional body is charged with a public responsibility to help ensure and maintain high standards of professional ethics and practice. The discipline committee, in the proper discharge of its function, is best able to assess the gravity of the misconduct and its consequences to the public and the profession. The appeal committee should only interfere with the discipline committee's discretionary powers as to sentencing if the discipline committee has misapplied the accepted principles of sentencing, considering all the circumstances of the case, with the result that the sentence imposed is outside the range of sentencing for that type of offence.

After listening to the submissions made, and reviewing the materials filed, the appeal committee concluded that the discipline committee had properly considered the principles of sentencing, including the principle of rehabilitation, about which the committee stated in its reasons that "there was no persuasive evidence, indeed almost no evidence at all, that Mr. Quon was capable of rehabilitation." Furthermore, the discipline committee had noted in its reasons that Mr. Quon's failure to cooperate with the professional conduct committee was prolonged and persistent, and concluded that Mr. Quon was unwilling or unable to be governed. The discipline committee considered Mr. Quon's filed undertaking, which was intended to address the issue of

ensuring the public was properly served during his proposed period of rehabilitation, and noted that “there was no basis for concluding that Mr. Quon could or would cooperate with the Institute and carry out the terms of the undertaking.”

The appeal committee concluded that the discipline committee had properly considered all the principles of sentencing, and had imposed a sanction within the range of sanctions appropriate for a breach of Rules 201.1, 202 and 203.2, and that, accordingly, there was no basis upon which to vary the sanction imposed. Mr. Quon’s appeal was therefore dismissed, and the decision and order of the discipline committee confirmed in its entirety.

DATED AT TORONTO THIS DAY OF JULY, 1999
BY ORDER OF THE APPEAL COMMITTEE

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

MEMBERS OF THE PANEL:

A.R. BYRNE, CA
E.W. CONLIN, CA
L.L. WORTHINGTON, FCA
E. ZAVERSHNIK, CA
A. BROWN (Public representative)