

## **Frederick Scott Bendall: Summary, as Published in *CheckMark***

**Frederick Scott Bendall**, of Huntsville, was found guilty of three charges under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest. While the director of finance of a district hospital, Mr. Bendall participated in a scheme to misrepresent the hospital's financial position to the Ministry of Health in order to obtain increased Ministry funding. Mr. Bendall did not initiate the plan to deceive the Ministry, but, upon instructions from the hospital's board of directors, played a significant role in the deception by overstating expenses and understating income on the hospital's audited financial statements. Mr. Bendall was fined \$3,000 and suspended from membership for three months.

## **CHARGE(S) LAID re Frederick Scott Bendall**

The Professional Conduct Committee hereby makes the following charges against F. Scott Bendall, CA, a member of the Institute:

1. THAT, the said F. Scott Bendall in or about November 1990, while the Director of Finance of the Huntsville District Memorial Hospital, failed to conduct himself in a manner that would maintain the good reputation of the profession and its ability to serve the public interest, in that he recorded or caused to be recorded a false entry in the accounting records of the Hospital that resulted in the Hospital's expenses for the year ended March 31, 1991 being overstated by approximately \$156,820, in order to increase Ministry of Health funding, contrary to Rule 201.1 of the rules of professional conduct.
2. THAT, the said F. Scott Bendall, in or about the period November 1990 through May 1993, while Director of Finance of the Huntsville District Memorial Hospital, failed to conduct himself in a manner that would maintain the good reputation of the profession and its ability to serve the public interest, in that he failed to disclose to the auditors an overstatement of the Hospital's expenses for the year ended March 31, 1991 thereby resulting in the misstatement of the Hospital's audited financial statements for the years ended March 31, 1991 and March 31, 1992 contrary to Rule 201.1 of the rules of professional conduct.
3. THAT, the said F. Scott Bendall, in or about February 1992, while Director of Finance of the Huntsville District Memorial Hospital, failed to conduct himself in a manner that would maintain the good reputation of the profession and its ability to serve the public interest, in that he participated in an arrangement whereby a surplus computer owned by the hospital was sold to Comeback Computer Design for \$20,000 and the proceeds was diverted from Huntsville District Memorial Hospital to another company in order to reduce a surplus on the financial statements of the Hospital and thereby increase Ministry of Health funding, contrary to Rule 201.1 of the rules of professional conduct.

Dated at Bellville this 10<sup>th</sup> day of May, 1996

JENNIFER L. FISHER, CA - CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

## **DISCIPLINE COMMITTEE re Frederick Scott Bendall**

**DECISION AND ORDER IN THE MATTER OF:** Charges against **FREDERICK SCOTT BENDALL, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

**DECISION AND ORDER MADE OCTOBER 29, 1996**

### **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, 2, and 3 as amended, the Discipline Committee finds Frederick Scott Bendall guilty of charges Nos. 1, 2, and 3 as amended.

### **ORDER**

IT IS ORDERED in respect of the charges:

1. THAT Mr. Bendall be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Bendall be and he is hereby fined the sum of \$3,000, 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. Bendall be and he is hereby suspended from the rights and privileges of membership in the Institute for a period of three (3) months from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Bendall'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 Mr. Bendall be and 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, to be held during the period of suspension and thereafter returned to Mr. Bendall.
6. THAT in the event Mr. Bendall fails to comply with the requirement of paragraph 2 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 in paragraph 4 hereof.

DATED AT TORONTO THIS 6TH DAY OF NOVEMBER, 1996  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

## **DISCIPLINE COMMITTEE re Frederick Scott Bendall**

**REASONS FOR THE DECISION AND ORDER IN THE MATTER OF:** Charges against **FREDERICK SCOTT BENDALL, 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 OCTOBER 29, 1996**

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on October 29, 1996.

The professional conduct committee was represented by Mr. Paul Farley. The member, Mr. F. Scott Bendall, was present and represented by his counsel, Mr. F.T. Richmond.

The professional conduct committee had laid three charges against Mr. Bendall. All three of the charges were that, while Director of Finance of the Huntsville District Memorial Hospital, he failed to conduct himself in a manner that would 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. 1 related to the overstatement of hospital expenses of approximately \$156,800, and Charge No. 3 related to the understatement of hospital income of approximately \$20,000. Both of these items were recorded in the books of the hospital in order to increase Ministry of Health funding. The second charge was that Mr. Bendall did not disclose to the auditor an overstatement of the hospital's expenses, thereby resulting in the misstatement of the hospital's audited financial statements.

Mr. Bendall pleaded guilty to the charges, and confirmed that he understood that upon the basis of his plea and upon that basis alone, he could be found guilty of the charges.

Counsel for the professional conduct committee in his brief opening statement made it clear that the Huntsville Hospital had misrepresented its financial position to the Ministry of Health for the purpose of obtaining increased funding, that is funding over and above what it would have received had it provided the Ministry accurate information. Mr. Bendall was not the person who decided to deceive the Ministry, but, as the Director of Finance at the hospital, he played a significant role in the deception, and, in particular, was responsible for the overstatement of expenses and the understatement of income. Mr. Farley filed an agreed statement of facts and a document brief. When the discipline committee had finished reading the agreed statement of facts and reviewing the document brief, Mr. Farley concluded his case. Mr. Richmond did not call evidence on behalf of the member with respect to the issue of guilt or innocence.

When the discipline committee commenced its deliberations with respect to the issue of guilt, a number of questions arose. We recognized that some of the questions might more properly be raised in the context of determining an appropriate sanction and might be premature. But it was apparent from the agreed statement of facts and document brief that the chief executive officer of the hospital was an accountant, at least one member of the Board of Directors of the hospital was a chartered accountant, and the auditors, a firm of chartered accountants, had been advised at some point in time about the false entries in the financial statements and the manipulative schemes used to increase the funding from the Ministry. There were questions

relating to what Mr. Bendall told the auditors, so we asked the parties to re-attend, reconvened the hearing and asked a number of questions. We were told that there is an ongoing investigation of the chartered accountant who was a member of the Board of Directors and of the auditors, but that no decision had been made as to whether or not there would be a charge or charges laid against any of them. We were also advised that Mr. Bendall had refused to sign the representation letter to the auditors for a number of years, as it was his position that the financial statements "were not worth the paper they were written on". With respect to the financial statements for the year end March 31, 1991, he again refused to sign the representation letter, but he did not specifically tell the auditors of the misstatement with respect to the \$156,820.

After hearing the answers to our questions, we deliberated, and, upon considering the agreed statement of facts, the document brief, and what we had heard, found Mr. Bendall guilty of the charges.

### **SANCTIONS**

Counsel for the professional conduct committee did not call evidence with respect to the issue of sanction. Counsel for the member called four witnesses.

Mr. Hutcheson, a long time resident of the Huntsville area whose family has extensive business interests, is Mr. Bendall's present employer. Mr. Hutcheson knew Mr. Bendall's employment with the hospital had been terminated, and knew something of the reason for the termination before he hired him. His evidence was that Mr. Bendall is an honest and trustworthy person who is a good chartered accountant.

Dr. John Tait, a now-retired dentist, was, for a period of time, a member of the Board of Directors of the Huntsville Hospital. Ultimately, Dr. Tait resigned from the Board of the hospital as he was unhappy with the way the Board operated, and, in particular, with the way discussion was curtailed at Board meetings. He testified that he knew Mr. Bendall to be uncomfortable with and anxious about the accounting practices and the manipulation of the financial information sent to the Ministry.

Mr. Michael Ford, C.G.A. the former CEO of the Huntsville Hospital from 1973 until his dismissal in 1993, gave evidence which, in clear unequivocal terms, highlighted one of the difficult aspects of this case. Simply put, the directors of the Huntsville Hospital were convinced that, compared to other hospitals of similar size, their hospital was being underfunded by the Ministry of Health. In order to obtain funding closer to the level which the Board thought it deserved, the Board, through Mr. Ford, gave instructions to Mr. Bendall to misrepresent the true financial position of the hospital with a view to maximizing the funding from the Ministry. Mr. Ford was entirely unrepentant for the Board's and his actions. He firmly stated that other hospitals were doing the same, and that it was the only alternative the Huntsville Hospital had in light of what its Board perceived to be unfair treatment by the Ministry. He testified that the Executive Committee of the Board of Directors had told him, and that he in turn had told Mr. Bendall, to "get rid of the surplus and don't tell us how". The evidence clearly established that the Finance Committee and the Executive Committee of the Board of Directors were aware of the false financial statements. As they saw it, they were prepared to do a little wrong to achieve a just result for their community hospital.

Mr. Bendall also gave evidence. He admitted that he had played a part in the efforts to maximize funding for the hospital, and that, in hindsight, he should have done more to bring these false entries, manipulations and misrepresentations to light. It was apparent that at one

time he had hoped the books and records would be corrected so that the misrepresentation would not carry over beyond one funding year. This correction was not made. He knew that the Ministry of Health had been misled, but he did not notify the Ministry because he was convinced that he would be fired if he did. Ultimately, he was fired in the face of an operational review by independent consultants. It became clear to the Board that Mr. Bendall was going to be forthcoming to those consultants about what had taken place. It appears that at the time he was fired, Mr. Bendall was seen in the community as the person who had caused the problem, and his reputation and family suffered as a result. However, a special investigation by police from outside the Huntsville area cleared him of those allegations. Mr. Bendall was not the person who originated the scheme. The hospital community, and in particular the directors, thought that the misrepresentation was justified. It was not. Mr. Bendall, as the Director of Finance, played a significant role because he was the person who actually made the false entries and created the misleading financial statements.

Counsel for the professional conduct committee made his submissions with respect to sanction, and suggested the appropriate order would be:

- a written reprimand;
- a fine of \$3,000 to \$5,000;
- a suspension for 3 months; and
- notification of the Decision and Order, disclosing the member's name, to the Public Accountant's Council for the Province of Ontario, to the Canadian Institute of Chartered Accountants, and by publication in *CheckMark*.

Mr. Farley referred to previous discipline cases, and the principles which govern the imposition of sanctions - specific deterrence, general deterrence and rehabilitation - and related them to the facts of this case.

Mr. Richmond, on behalf of the member, submitted that only a written reprimand and publicity would be appropriate in this case, and cited his reasons to support this position. He suggested that this case was unique, in that there was no attempt by Mr. Bendall to benefit personally, and in that he was given instructions from those above him, which, as a dutiful employee, he followed. Mr. Richmond suggested that, in fact, Mr. Bendall "blew the whistle" on the entire scheme. The discipline committee, during deliberation, determined that the member had had numerous previous opportunities to disclose the misconduct, but did not do so until an independent review of the hospital by consultants engaged by the Ministry of Health had gotten underway.

After hearing the submissions by both counsel, the discipline committee deliberated and made the following order:

### **ORDER**

IT IS ORDERED in respect of the charges:

1. THAT Mr. Bendall be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Bendall be and he is hereby fined the sum of \$3,000, 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. Bendall be and he is hereby suspended from the rights and privileges of membership in the Institute for a period of three (3) months from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Bendall=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 Mr. Bendall be and 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, to be held during the period of suspension and thereafter returned to Mr. Bendall.
6. THAT in the event Mr. Bendall fails to comply with the requirement of paragraph 2 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 in paragraph 4 hereof.

The reasons for the Order are briefly set out below.

### **Reprimand**

The discipline committee is of the view that a reprimand is necessary as a specific deterrent to the member, to stress to him the unacceptability of his conduct as a chartered accountant.

### **Fine**

The professional conduct committee asked for a fine of \$3,000 to \$5,000. We concluded that a fine is important as both a general and a specific deterrent, and that the amount of \$3,000 would achieve both of these objectives.

### **Suspension**

It was decided by the discipline committee that the principle of deterrence, both general and specific, required a suspension in this case, and we concluded that in the circumstances, Mr. Bendall=s misconduct required a 3 month suspension. The charges of which this member was found guilty reflect on the credibility of the profession, and the discipline committee believes that a suspension will send a message to all members that this type of conduct will not be tolerated. The falsification of documents in order to deceive is a very serious offence, and the membership must be made aware that chartered accountants cannot permit themselves to be bought at any price.

### **Notice**

The disciplinary process of a self-governing professional organization must be viewed by its members and the public as an open process. Notification of the Institute's efforts in disciplining those in breach of its bylaws and rules of professional conduct is an important function in the preservation of the integrity of the profession.



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

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

MEMBERS OF THE PANEL:

H.B. BERNSTEIN, CA

P.A. GOGGINS, CA

J.J. LONG, CA

W.L. WOOD, CA

B.W. BOWDEN (Public representative)