

George Francis Wagner: Summary, as Published in *CheckMark*

George Francis Wagner, of Georgetown, was found guilty of a charge under Rule 202 of failing to carry out his professional services with due care, and a charge under Rule 205 of signing reports containing information that he knew was false. While engaged as the bookkeeper and treasurer of a local branch of the Royal Canadian Legion, Mr. Wagner failed to properly account for cash shortages in the Legion's bar cash float account. He also signed and filed with the Ministry of Consumer and Commercial Relations Nevada ticket lottery reports containing false information as to the proceeds derived from ticket sales and as to the use of the proceeds. Mr. Wagner was fined \$5,000, suspended for three months, and ordered to complete a specified professional development course.

Mr. Wagner returned to MEMBERSHIP IN GGOD STANDING on March 3, 1998.

CHARGE(S) LAID re George Francis Wagner

The Professional Conduct Committee hereby makes the following charges against George F. Wagner, a member of the Institute:

1. THAT, the said George Wagner, in or about the period December 8, 1990 through April 30, 1993, while acting as or holding himself out as treasurer for the Royal Canadian Legion Branch 120, Georgetown, signed and filed with the Ministry of Consumer and Commercial Relations Nevada Ticket Lottery Reports, and certified that the report filed contained a correct statement of the lottery funds referred to therein knowing the reports to contain information that was false, contrary to Rule 205 of the rules of professional conduct and in particular he;
 - a) signed and filed an undated report for the period June 1, 1990 to December 8, 1990 showing net proceeds of the lottery to be \$25,358.40 when actual proceeds were approximately \$1,963.40 more;
 - b) signed and filed a report dated May 31, 1991 for the period December 13, 1990 to May 31, 1991 showing net proceeds of the lottery to be \$25,448.96 when actual proceeds were approximately \$2446.43 less;
 - c) signed and filed a report dated March 11, 1992 for the period June 1, 1991 to November 30, 1991 showing net proceeds of the lottery to be \$25,397.10 when actual proceeds were approximately \$4767.43 less;
 - d) signed and filed a report dated August 4, 1992 for the period February 1, 1992 to June 21, 1992 showing net proceeds of the lottery to be \$25,397.10 when actual proceeds were approximately \$5220.52 less; and
 - e) signed and filed a report dated April 28, 1993 for the period June 22, 1992 to December 22, 1992 showing net proceeds of the lottery to be \$25,397.10 when actual proceeds were approximately \$3114.82 less.
2. THAT, the said George Wagner, in or about the period December 1990 through May 1995, while acting as the bookkeeper and or treasurer, for the Royal Canadian Legion Branch 120, Georgetown, failed to carry out his professional services, with respect to his engagement to look after the day to day administration of the affairs of the Legion, with integrity and due care, contrary to Rule 202 of the Rules of Professional Conduct and in particular;
 - a) he failed to ensure that any or adequate steps were taken to develop a formalized procedure for recording and handling Nevada Club Lottery receipts and payment of cash prizes;
 - b) he failed to ensure that steps were taken to develop internal controls to ensure the Legion would be receiving all of the income that it would be entitled to during the period that slot machines were installed on the Branch premises, September 1993 to December 1994;

- c) he used the Legion bar cash float account 1040 "Cash in Register" during the period June 1994 to May 1995 as a repository for the cash differences that accumulated in the Legion canteen each month until the cash on hand that was recorded in the account reached the amount of approximately \$32,000 when he knew that this balance was materially inaccurate and did nothing to verify, correct or adjust the balance.

Dated at Toronto this 11th day of July 1996.

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

DISCIPLINE COMMITTEE re George Francis Wagner

DECISION AND ORDER IN THE MATTER OF: Charges against **GEORGE FRANCIS WAGNER, CA**, a member of the Institute, under **Rules 202 and 205** of the Rules of Professional Conduct, as amended.

DECISION MADE JUNE 26 AND ORDER MADE JUNE 27, 1997

DECISION

THAT, having seen, heard and considered the evidence, the Discipline Committee finds George Francis Wagner guilty of charges Nos. 1 and 2.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Wagner be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Wagner be and he is hereby fined the sum of \$5,000, 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. Wagner be 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 Mr. Wagner be and he is hereby required to complete, by attending in its entirety, within one (1) year from the date this Decision and Order becomes final under the bylaws, the professional development course entitled *Practice Ethics*, made available through the Institute, or, in the event that course becomes unavailable, the successor course which takes its place.
5. THAT notice of this Decision and Order, disclosing Mr. Wagner'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*.

6. THAT Mr. Wagner 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. Wagner.
7. THAT in the event Mr. Wagner fails to comply with the requirements of paragraphs 2 or 4 of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three month period, 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 5 hereof.

DATED AT TORONTO THIS 21ST DAY OF JULY, 1997
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re George Francis Wagner

REASONS FOR DECISION AND ORDER IN THE MATTER OF: Charges against **GEORGE FRANCIS WAGNER, CA**, a member of the Institute, under **Rules 202 and 205** of the Rules of Professional Conduct, as amended.

REASONS FOR DECISION MADE JUNE 26 AND ORDER MADE JUNE 27, 1997

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on March 18 and 19, and May 26 and 27, 1997, to hear evidence concerning charges brought by the professional conduct committee against Mr. George Francis Wagner, CA. After hearing the evidence, the panel reconvened on June 26 to deliberate, at which time it found the member guilty of the charges laid. The panel then reconvened on June 27 to address the issue of sanction.

The charges dealt with:

- signing and filing false Nevada Ticket Lottery Reports with the Ministry of Consumer and Commercial Relations, contrary to Rule 205 of the rules of professional conduct (Charge No. 1); and
- failing to carry out professional services with integrity and due care while acting as the bookkeeper and treasurer of the Royal Canadian Legion Branch 120, Georgetown, contrary to Rule 202 of the rules of professional conduct (Charge No. 2).

Mr. Wagner pleaded not guilty to both charges.

During the course of the hearing, the professional conduct committee was represented by Mr. Brian Bellmore, and Mr. Wagner was represented by Mr. Douglas McTavish. Mr. Bellmore called three witnesses, and Mr. McTavish called three witnesses, in addition to Mr. Wagner himself.

Decisions on the Charges

Relating to Charge No. 1, the evidence showed that Mr. Wagner signed the five reports in question as treasurer of the Legion. He did not signify in these reports that he was a chartered accountant. Mr. Wagner's defence on this charge, and on Charge No. 2, was that he did not regard the Legion as a client of his accounting practice, and that he was acting simply as an honorary member of the Legion who was trying to help out. He stated that the fee he charged was used to help cover office overhead only and that the amount charged was well below his normal hourly rate. Evidence showed that he charged GST on his fees, and deposited the fees into a bank account used as a business account for his practice. The panel rejected the argument that Mr. Wagner was not acting as a chartered accountant. He was a chartered accountant and was providing accounting services for which he was compensated. He is a member of the profession, and with membership there are responsibilities, one of which is the obligation to follow the rules of professional conduct. Rule 205 does not apply only to members

engaged in the practice of public accounting, but to all members of the Institute regardless of their occupations.

In reviewing each report that Mr. Wagner signed, as outlined in Charge No. 1, the panel came to the conclusion that the detail in the forms was lacking in clarity when it came to the issue of shortages. The truly misleading part of the form which Mr. Wagner attested as correct was the bottom line Net Proceeds Derived. According to regulations of the Gaming Control Commission, net proceeds derived from the conduct of the break open ticket lottery shall be used for the charitable or religious objects or purposes in Ontario as specified and approved in the application for licence. Evidence showed that the net proceeds derived was not the amount that was used for charitable purposes. As Mr. Wagner knew this to be the case, his signing and filing of these false reports made him guilty of Charge No. 1.

Charge No. 2 had three particulars for the panel to consider. After hearing the evidence, the panel concluded that particulars a) and b) had not been proven by the professional conduct committee. The panel did, however, find that particular c) had been proven, and accordingly found Mr. Wagner guilty of Charge No. 2.

In his interview with the professional conduct committee's investigator, Mr. Carty, Mr. Wagner stated in reference to the Cash in Register account (a balance sheet item on the trial balance), Al was doing the work late, not looking carefully enough at accounts, and expecting that at year end everything would be okay. This led me to not do the work that now, in retrospect, I see should have been done. I thought that the auditor's disclosure of amounts at year end would be enough. Nothing was being hidden (Exhibit No. 9).

The evidence showed that the accounting computer program in use at the Legion would have revealed a significantly different operating result had Mr. Wagner been up to date and presented to the Legion's executive a complete trial balance. He stated he only gave them the income and expenses section, thus not revealing the shortage amounts building up in the 1040 account on the balance sheet. He testified, however, that he kept telling the executive that there were shortages.

With respect to this second charge, there was a question as to whether or not the conduct fell far enough below the accepted standard as to amount to professional misconduct. Not every slip is professional misconduct, and, while this was not the primary defence or one which was urged upon us, it was an issue which the committee considered. The committee must be persuaded by a preponderance of credible evidence that the facts alleged have been established and that those facts amount to professional misconduct. While with respect to particulars a) and b) of the second charge we were not persuaded, we did find Mr. Wagner guilty of Charge No. 2 because the facts alleged in particular c) were proven and did constitute professional misconduct.

SANCTIONS ORDER

After the panel found Mr. Wagner guilty of the charges, the parties were given the opportunity to call evidence on the issue of sanction. Mr. Graeme Goebelle, FCA, was called as a character witness on behalf of Mr. Wagner. The panel then heard submissions from both parties with respect to appropriate sanction.

During submissions, Mr. Bellmore, referring to a discipline hearing held in 1994 into a charge of professional misconduct laid against Mr. Wagner for failing to cooperate in a practice inspection, stated that Mr. Wagner "didn't get the message in 1994". The panel felt that it was appropriate to ask Mr. Wagner about this. Mr. Wagner addressed the panel and said that he was sorry and felt he had learned a valuable lesson in these proceedings. He said that his misconduct in 1994 was a function of tardiness, which would not happen again. He indicated that he had always considered himself a chartered accountant in all of his actions, which was a statement in direct contrast to his previous sworn testimony. When asked about this apparent inconsistency, Mr. McTavish responded that he (McTavish), in consultation with Mr. Irving Rosen, FCA, the defence's expert, was responsible for the defence, and that the idea of Mr. Wagner's putting on and taking off his CA hat was his idea and not his client's. This answer did not explain to the satisfaction of the panel why Mr. Wagner would tell Mr. Carty and testify under oath that he did not consider himself a CA but just a Legion member trying to help.

In reaching its conclusion as to sanctions, the panel considered the principles of general deterrence, specific deterrence and rehabilitation, and concluded that all three principles were relevant to this member and the facts of this case. Determining the appropriate sanction is usually a difficult task. This is a case where there is a need to fashion an order which will serve the purposes of specific deterrence and rehabilitation and still be a general deterrent. In the absence of expulsion, general deterrence usually requires a fine and suspension.

With respect to rehabilitation and specific deterrence, the professional conduct committee did not seek expulsion since it did not believe that the member was ungovernable. The discipline committee came to the same conclusion. But there is a need to specifically deter the member from similar breaches in the future, and, more generally, to be sure he understands the standard he must meet. The member is a repeat offender, having been found guilty on May 19, 1994 of failing to cooperate in a practice inspection. While the defence he asserted was on the advice of his counsel, it is difficult to understand how any member could think Rule 205 did not apply in circumstances where the member was being paid by the entity on whose behalf the member was submitting a financial report. The fact that Mr. Wagner acknowledged under oath that at least one of the reports which he signed was false suggests that he did not accept that the rule applied to him.

With respect to general deterrence, it should be emphasized that there was no evidence that Mr. Wagner was dishonest or that he was motivated by pecuniary self-interest. Mr. Wagner found himself in a difficult position. The prescribed reporting forms lacked clarity, and the client was reluctant to address the problems which Mr. Wagner pointed out. There was a sense that no matter what Mr. Wagner did, the Legion intended to conduct its affairs its way. There is no suggestion that Mr. Wagner took the money which went missing from the Legion's coffers. His conduct fell below the expected standard but the breaches were not egregious.

Upon deliberation, the discipline committee made the following Order:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Wagner be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Wagner be and he is hereby fined the sum of \$5,000, 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. Wagner be 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 Mr. Wagner be and he is hereby required to complete, by attending in its entirety, within one (1) year from the date this Decision and Order becomes final under the bylaws, the professional development course entitled *Practice Ethics*, made available through the Institute, or, in the event that course becomes unavailable, the successor course which takes its place.
5. THAT notice of this Decision and Order, disclosing Mr. Wagner'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*.
6. THAT Mr. Wagner 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. Wagner.
7. THAT in the event Mr. Wagner fails to comply with the requirements of paragraphs 2 or 4 of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three month period, 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 5 hereof.

The reasons for the discipline committee's Order as to sanction 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 requested a fine of \$ 5,000, and the member's counsel did not object to the fine or the quantum. The discipline committee concurred with counsel for the professional conduct committee that a fine is important as both a general and specific deterrent.

Suspension

It was accepted by the discipline committee that the principle of deterrence, both general and specific, requires a suspension in this case. Mr. Wagner signed five reports that he knew or should have known were false, and he also failed to perform his professional services with integrity and due care with respect to the Legion's records. The professional conduct committee asked for a six month suspension, while counsel for Mr. Wagner argued against any suspension, stating that it would serve no purpose since his client was a good and governable member, and adding that a suspension would be economic death to a sole practitioner in a small town. The committee felt that a suspension was necessary in the circumstances of this case, and that a three month suspension would serve as a general deterrent to the membership and convey the message that this type of conduct cannot and will not be condoned.

Professional Development Courses

The committee believes that one of the purposes of the disciplinary process, in appropriate cases, is to encourage rehabilitation. Both counsel agreed that this member is not ungovernable, and Mr. Wagner's counsel suggested that his client attend a professional development course on ethics. The committee made such an order.

Notice

The disciplinary process of a self-governing professional body 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. Not having been advised of any unusual circumstances to persuade it to withhold the member's name from publication when giving notice of this case, the committee ordered that notice be given including the member's name.

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

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

MEMBERS OF THE PANEL:

H.B. BERNSTEIN, CA
B.M. BYRNE, CA
D.W. DAFOE, FCA
L.R. FLEMMING, CA
V.G. STAFL (Public representative)