

George Donald White: Summary, as Published in *CheckMark*

George Donald White, of Waterloo, was found guilty of a charge of professional misconduct, under Rules 201, arising from his conviction under the *Income Tax Act* of willfully evading or attempting to evade the payment of his own taxes by claiming personal and other non-deductible expenses. He was fined \$10,000 and suspended from membership for two years. The professional conduct committee appealed the discipline committee's decision and order and Mr. White cross-appealed. The appeal committee confirmed the decision and order and dismissed the appeal and cross-appeal. In so doing, the appeal committee varied one term of the discipline committee's order, to provide that Mr. White's right and entitlement to call himself a Fellow of the Institute or use the initials "FCA" be suspended for so long as he is a member of the Institute.

Mr. White returned to MEMBERSHIP IN GOOD STANDING on February 11th, 1994.

CHARGE(S) LAID re George Donald White

The professional conduct committee hereby makes the following charge against George Donald White, FCA, a fellow of the Institute:

1. THAT, the said George Donald White 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 the 13th day of August 1990, at the City of Kitchener in the Judicial District of Waterloo in the Province of Ontario, he was convicted of an offence under the said *Income Tax Act* namely that he unlawfully did, between the 31st day of December, 1982 and the 1st day of May, 1987, at 318 Dale Crescent, in the City of Waterloo, in the Regional Municipality of Waterloo, or elsewhere in the Province of Ontario wilfully evade or attempt to evade payment of taxes in the amount of \$50,003.50 imposed by the said *Income Tax Act*, R.S.C. 1952, Chapter 148, as amended by claiming personal and other non-deductible expenses in the amount of \$178,656.64 for the taxation years 1983, 1984, 1985 and 1986 and did thereby commit an offence under Section 239(1)(d) of the said *Income Tax Act*, all of which is contrary to Rule 201 of the rules of professional conduct as amended.

DATED at Toronto this 5th day of December 1990.

R.G. LONG, CA - CHAIR,
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re George Donald White

DECISION AND ORDER IN THE MATTER OF: A charge against GEORGE DONALD WRITE, FCA, a member of the Institute, under Rule 201 of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE JUNE 5, 1991

DECISION

THAT, having seen, heard and considered the evidence, THE DISCIPLINE COMMITTEE FINDS George Donald White guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. White be reprimanded in writing by the chairman of the hearing.
2. THAT Mr. White be and he is hereby fined the sum of \$10,000, to be remitted to the Institute within sixty (60) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. White be suspended from the rights and privileges of membership in the Institute for a period of two (2) years from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. White's Fellowship in the Institute be and it is hereby revoked.
5. THAT notice of this Decision and Order, disclosing Mr. White's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario;
 - (c) to the Canadian Institute of Chartered Accountants;
 - (d) to the Ordre des comptables agréés du Québec; and
 - (e) to the Kitchener-Waterloo Record.
6. THAT Mr. White be and he is hereby ordered to surrender to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws:
 - (a) his certificate of membership in the Institute, to be held by the registrar during the period of suspension and thereafter returned to Mr. White; and
 - (b) his certificate of election as a Fellow of the Institute.

7. THAT in the event Mr. White fails to comply with any of the requirements of this Order within the time periods specified, 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 18TH DAY OF JUNE, 1991
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re George Donald White

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: A charge against GEORGE DONALD WHITE, FCA, a member of the Institute, under Rule 201 of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE JUNE 5, 1991

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on June 5, 1991.

Mr. Paul Farley attended on behalf of the professional conduct committee and Mr. White attended with his counsel, Mr. Ross Morrison.

The professional conduct committee had laid one charge of professional misconduct against Mr. White, to which he entered a plea of not guilty.

After making an opening statement, counsel for the professional conduct committee called Mr. Ray Harris as a witness. Mr. Morrison objected to two aspects of Mr. Harris' testimony:

1. Mr. Harris' opinion regarding Mr. White's alleged failure to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, on the basis that that is the very issue that must be decided by the discipline committee; and
2. Mr. Harris' evidence as to how his own firm would treat a partner in similar circumstances to those of Mr. White, on the basis that it was not relevant.

Mr. Farley agreed not pursue the second matter. The committee heard submissions by both counsel as to whether Mr. Harris should be allowed to express his opinion on the first matter.

After deliberation the committee decided that the testimony should be allowed. The panel chairman advised that the issue of what weight should be put on the evidence was a matter that the panel would later have to determine and that counsel were welcome to make submissions on that point during closing arguments.

The facts of the case were not in dispute and are clearly outlined in the Document Book (Exhibit 4). Mr. White pleaded guilty on August 13, 1990 in the Provincial Court (Criminal Division) for the Judicial District of Waterloo, at Mtchenor, to one charge of wilfully evading or attempting to evade payment of taxes in the amount of \$50,003.50, by claiming personal and other non-deductible expenses in the amount of \$178,656.64 for the taxation years 1983, 1984, 1985 and 1986.

Some pertinent facts relating to the tax evasion scheme are the following.

1. A company named Depaw Inc. was incorporated by Mr. White in November 1980.

2. During the taxation years 1983 through 1986, Depaw Inc.'s only shareholder, client and employee was Mr. White, and its business address was Mr. White's residence address.
3. An analysis of expenses claimed by Depaw Inc. revealed that those expenses related to the use of Mr. White's residence as an office, and to personal living and entertainment costs of Mr. White and his two sons.
4. The kinds of personal expenses claimed included such things as summer vacations, ski trips, cameras and accessories, mountain bikes, video games, clothing and toys. Soft drinks, coffee, juice, tissue paper, detergent, and water softener salt were claimed as "office supplies". Property taxes, cable T.V., snow shovelling costs and garden supplies were claimed as "occupancy costs". Meals at places such as Harvey's, Swiss Chalet, Burger King and McDonald's were claimed as "maintenance and repairs".
5. By overstating expenses in the amount of \$178,656.64, Mr. White omitted from payment of federal income taxes the sum of \$50,003.50.
6. Tax officials determined that Mr. White had a good knowledge of the income tax laws.
7. No other parties or clients were involved in the scheme.

The facts in this case were not in dispute between the professional conduct committee and the defence. What was being disputed by Mr. White was whether or not those facts amounted to a breach of Rule 201. Mr. Morrison argued that the rule is two-pronged and that two tests must be met in order for a member to be found guilty under this rule. These tests, it was argued, are that the member must have conducted himself in a manner that failed to maintain both

1. the good reputation of the profession; and
2. the profession's ability to serve the public interest.

The committee rejected Mr. Morrison's argument. Any action by a member of the Institute which tarnishes the good reputation of the profession necessarily impairs the profession's ability to serve the public interest, and any action which impairs the profession's ability to serve the public invariably tarnishes the profession's reputation.

After deliberation the committee found Mr. White guilty of the charge.

Honesty and integrity are clearly the cornerstones of the chartered accountancy profession. Any chartered accountant who sets out to wilfully evade payment of his own taxes fails to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest.

After reaching its finding on the charge, the committee heard submissions as to sanction. After hearing those submissions, and deliberating on them, the committee made the following order:

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. White be reprimanded in writing by the chairman of the hearing.

2. THAT Mr. White be and he is hereby fined the sum of \$10,000, to be remitted to the Institute within sixty (60) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. White be suspended from the rights and privileges of membership in the Institute for a period of two (2) years from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. White's Fellowship in the Institute be and it is hereby revoked.
5. THAT notice of this Decision and Order, disclosing Mr. White's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario;
 - (c) to the Canadian Institute of Chartered Accountants;
 - (d) to the Ordre des comptables agréés du Québec; and
 - (e) to the Kitchener-Waterloo Record.
6. THAT Mr. White be and he is hereby ordered to surrender to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws:
 - (a) his certificate of membership in the Institute, to be held by the registrar during the period of suspension and thereafter returned to Mr. White; and
 - (b) his certificate of election as a Fellow of the Institute.
7. THAT in the event Mr. White fails to comply with any of the requirements of this Order within the time periods specified, 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.

In determining the sanctions, the committee gave consideration to the principles of general deterrence, specific deterrence, and rehabilitation. Clearly, it was decided, the principle of general deterrence must take precedence over the others in this case.

The professional conduct committee sought the expulsion of the member, while his counsel argued that a short period of suspension would well serve the public interest. After some initial deliberation on these opposing positions, the committee asked counsel to make submissions on how well the principle of general deterrence would be served by the imposition of a lengthy suspension coupled with a fine.

There were few precedents that the committee could review that involved offences of wilfully evading the payment of income taxes. The Bernard Goodman case was raised, but the committee did not find it useful as a precedent. Mr. Goodman was both an Ontario and a Quebec CA, who lived and worked in Quebec. Arising out of his conviction for income tax evasion, he was charged and found guilty of professional misconduct by the Quebec Ordre. Subsequently, he was charged in Ontario, and again found guilty of professional misconduct, under Rule 201.

The reason the order made against Mr. Goodman by the discipline committee of the Ontario Institute was comparatively light was because he had already been dealt with in the primary

jurisdiction of Quebec. That very distinguishing factor renders the Goodman case entirely inappropriate as a reliable precedent.

In support of his submission for Mr. White's expulsion from membership, counsel for the professional conduct committee cited the Institute cases of Ferri, Baillie and Lutvak, all of which involved criminal misconduct on the part of the member charged, and in all of which the member was expelled.

Those cases are distinguishable from that of Mr. White, however, in that they all involved misconduct resulting in financial losses to either clients or employers, whereas Mr. White's misconduct related only to his personal tax affairs and did not involve clients or other parties.

Income tax evasion cannot be condoned, and any sanction imposed must reflect the seriousness with which such conduct is viewed by the profession. The committee concluded that a two year suspension, coupled with a fine of \$10,000, was appropriate. The following considerations were important to this determination:

1. This was a case of the criminal offence of income tax evasion which involved Mr. White personally. No other party was involved. After his illegal activities were discovered he was honest in his dealings with Revenue Canada and made no attempt to alter or destroy documents.
2. Mr. White's contribution to the profession over the years has been substantial. During his career as a chartered accountant, Mr. White has conducted himself in a highly professional manner, demonstrating competency and earning the respect of his peers and superiors. Documentation presented at the hearing indicated that he has served his clients with a high degree of dedication and integrity. He has shown a great interest in his profession by becoming involved in activities of the Institute, for which he earned a Fellowship.
3. The character references filed on behalf of Mr. White with the committee indicated that his illegal behavior was out of character.
4. Mr. White has suffered considerable embarrassment and his stature within his profession and his community has been significantly diminished. His legal counsel indicated that the member is fully cognizant of the gravity of his actions, and that he is truly sorry.
5. Mr. White has made restitution by repaying all taxes owed plus penalties and fines.

In addition to the suspension and fine, Mr. White's F.C.A. designation was revoked and he is to return his certificate to the Institute. Clearly, this honor bestowed on Mr. White by the profession cannot be retained when his activities have so tarnished the reputation of the profession.

As is its usual practice, the committee ordered that a written reprimand be issued to Mr. White, to stress to him the unacceptability of his conduct as a chartered accountant. The committee also made its usual order as to notification and publication of its decision and order, to include the member's name.

DATED AT TORONTO, THIS 7th DAY OF AUGUST, 1991
BY ORDER OF THE DISCIPLINE COMMITTEE

R.C.H. ANDREWS, CA - DEPUTY C
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL

F.A. DROZD, FCA
L.R. FLEMMING, CA
WA MOORHEAD, FCA
J.B. SCOTT, CA
S.F. ANDRUNYK
(Public Representative)

APPEAL COMMITTEE re George Donald White

IN THE MATTER OF: An appeal dated August 16, 1991, lodged by the professional conduct committee, against the decision and order of the discipline committee made on June 5, 1991, regarding Mr. George D. White, FCA, a member of the Institute, pursuant to *The Chartered Accountants Act* and the Bylaws pursuant to the Act. And a Cross-Appeal, dated September 23, 1991, lodged on behalf of Mr. George D. White, FCA, against the decision and order of the discipline committee, made on June 5, 1991, pursuant to *The Chartered Accountants Act* and the Bylaws pursuant to the Act.

This panel of the appeal committee was convened on February 11, 1992 to hear an appeal filed by the professional conduct committee against -Mr. White and a Cross-Appeal filed "on behalf of Mr. White against the Decision and Order of the discipline committee made on June 5. 1991.

At the hearing, the professional conduct committee was represented by its counsel, Mr. Paul Farley, and Mr. White, who was in attendance, was represented by his counsel. Mr. C.R. Morrison.

The appeal panel requested that the Cross-Appeal be heard first as to finding of guilt and then deal with the question of sanctions. Mr. Morrison and Mr. Farley were in agreement with this request.

The appeal panel, after reviewing the evidence that was before it and after hearing the submissions of both parties to the hearing, upheld the decision of the discipline committee as to a finding of guilt. The parties were advised at the hearing of the appeal committee's decision as to guilt and were then asked to make submissions as to sanctions.

The appeal panel after reviewing the evidence that was before it and after hearing the submissions of all parties to the hearing upheld the decision of the discipline committee as to sanctions with a variance to paragraph 4 of the Order which would be varied to read as follows:

4. That upon the expiration of the suspension of all his rights and privileges of membership as provided for in paragraph #3 above, Mr. White's right and privilege to call himself a Fellow of the Institute and use the initials FCA shall be suspended for as long as he remains a member; and unless Council at a time subsequent to this date votes to make him a Fellow of the Institute, he shall not enjoy that privilege again.

The appeal panel advised the parties at the conclusion of the Cross-Appeal of the decision and that written reasons would follow. The appeal panel also advised the parties at the completion of the hearing that they would reserve judgement at this time and advise the parties of their decision on the appeal as to sanctions after the completion of the Thomas Haar appeal. Subsequent to the hearing, the secretary to the appeal committee advised the parties as to the panel's decision on sanctions and advised that written reasons for the appeal committee's decision would follow as to why the committee left the sanction unchanged except for paragraph -1.

These are the reasons for the appeal committee's decisions on the Cross-Appeal and appeal.

BACKGROUND

Mr. White was found guilty of one charge of professional misconduct by the discipline committee on June 5, 1991.

The professional conduct committee appealed this decision with respect to sanctions only seeking a variation of the Order of the discipline committee varying the suspension for a period of two years from the date the Decision and Order becomes final under the Bylaws so as to provide that Mr. White be expelled from membership in the Institute and that all other parts of the Order of the discipline committee remain the same.

Mr. Morrison, on behalf of Mr. White, filed a Cross-Appeal seeking a variation of the Decision and Order of the discipline committee:

- a) that the finding of the discipline committee of guilty of the charge of professional misconduct be set aside and that in its stead a finding of not guilty of the charge be entered;
- b) that the finding of the discipline committee that any action by a member of the Institute which tarnishes the good reputation of the profession necessarily impairs the profession's ability to serve the public's interest be set aside;
- c) in the alternative, that the Order of the discipline committee be set aside or varied setting aside the \$10,000 fine, the Order that George White's fellowship in the Institute be revoked and requesting that Mr. White be suspended for only for a period of one year. and that the period of suspension takes effect from the date of the Decision of the Order of the discipline committee naively June 5, 1991 and not from the date that the Decision and Order of the discipline committee becomes final under the Bylaws.

ISSUES

1. Cross-Appeal

Mr. Morrison in his Cross-Appeal stated that the discipline committee erred in law and exceeded its jurisdiction in convicting Mr. White of the charge of professional misconduct on the evidence before it and that the finding of the discipline committee that any action by a member of the Institute which tarnishes the good reputation of the profession necessarily impairs the profession's ability to serve the public interest, made by the discipline committee on the evidence before it, justice.

He stated that the onus of proof as to proving professional misconduct was on the professional conduct committee and that no evidence was submitted to show that the conviction of Mr. White of income tax evasion impacted the ability of the profession to serve the public interest. Mr. Morrison claimed that there were two tests with respect to Rule of Professional Conduct 201.1 namely that a member shall conduct himself at all times in a manner which will serve the good reputation of the profession and that secondly there was a test with respect to the public interest. Mr. Morrison stated that Mr. White was not charged under Rule 205 which deals with a charge for a criminal conviction but under Rule 201.1. He stated that the testimony of Mr. Ray Harris at the discipline hearing clearly indicated no individual or organization had been impacted by the actions of Mr. White.

Mr. Farley, in rebuttal, stated that based on the evidence that was introduced at the discipline hearing on Mr. White, one could only conclude that Mr. White was guilty of breaching Rule 201.1. He stated that Mr. White had pleaded guilty to income tax evasion in Kitchener and that there were no disputes between the parties as to the facts of the case. He argued that all members and students must uphold and maintain the good reputation of the profession as well as its ability to serve the public interest and that a two part argument was in itself absurd. He concluded by stating that the decision of the discipline committee was proper and that no argument has been presented as to any error on the part of the discipline committee.

The panel concluded that the discipline committee had correctly understood the facts of the case and believes that public perception of chartered accountants is hampered by this type of action on the part of a member. They agreed that the arguments by Mr. Morrison were not substantiated as there was absolute proof of guilt of income tax evasion as evidenced by the Kitchener court case and subsequent publicity. The committee believes that income tax evasion of that magnitude by a member necessarily tarnishes the reputation of the profession. Consequently, the panel denied the Cross-Appeal and upheld the original decision of the discipline committee as to the finding of guilt.

The committee advised the parties to the hearing of its decision and informed the parties of its need to hear the appeal of the professional conduct committee and the Cross-Appeal of Mr. White with respect to sanctions.

2. Appeal

Mr. Farley, on behalf of the professional conduct committee, stated that he would demonstrate that the penalty or sanctions that were applied by the discipline committee were wrong. The facts of the case showed a serious disregard of the Rules of Professional Conduct and the reputation of the profession. He stated that the discipline committee had the power to apply all sanctions, that they cannot and must not operate in a vacuum and must use all precedents.

Mr. Farley stated that with respect to Point 1 of the Decision on page 4 that there was another party to the action namely the Government of Canada and taxpayers of Canada. He stated that stealing from the Government is the same as stealing from an employer or other third party. Secondly, he stated that he believed the discipline committee was overly impressed with the references of Mr. White as reflected in point 2 and point 3 of their decision. The discipline committee placed too much weight on this point. This should not be mitigating circumstances but an aggravating circumstance. Mr. White is an experienced chartered accountant and knew of his responsibility to the profession and public. Mr. White did not make one mistake but his misconduct carried on for over a four year period. He only stopped when he was caught by Revenue Canada. Mr. Farley also stated that the discipline committee erred in application of general deterrence and did not give sufficient weight to this fact and that they erred in principle when looking at the precedents.

Mr. Farley stated that all members found guilty of criminal fraud or income tax evasion with one exception have been expelled. The one exception was that of a Quebec member who was found guilty in Quebec and due to special circumstances of the case was not expelled by Ontario. He reviewed a number of cases with the appeal panel to illustrate his statements and also show that severe penalties have even been levied against members for the back dating of documents or forging of signatures on guarantees.

Based on precedents and the evidence submitted to discipline, he submitted that Mr. White should be expelled from membership. He said that consistency in sentencing is very important

and essential and that this consistency must be followed unless this case can be distinguished to be different from other precedents.

Mr. Morrison, on behalf of Mr. White, in rebuttal, stated that he believed the White case to be similar to the Goodman case in which Mr. Goodman was not expelled. He also related it to the Davidson and Hardcastle cases indicating that suspension was the sanction for dishonesty. He referred to a number of other cases including Law Society decisions indicating that the facts of those cases were compelling reasons to indicate that the discipline committee erred in principle as to sanction. He also referred to a decision of the College of Physicians and Surgeons. He then stated that no client or firm or members of the public were involved in the professional misconduct by Mr. White. He did not falsify or change any documents and his long career indicated that this was out of character for him to evade the payment of income taxes. He believed all of the facts for the case supported suspension but the sanctions went too far. He argued that the Jonas case was normal and that the discipline committee should have considered all facts and circumstances and that a two year suspension was too severe.

Mr. Morrison then dealt with the issue of the revocation of the FCA designation and claimed that the discipline erred in law and exceeded its authority in that only Council could revoke the FCA designation. Lastly, Mr. Morrison argued that the suspension was in fact for more than two years since Mr. White has not practised since December 1990. He requested that the term of suspension commence June 5, 1991, the date of the discipline committee hearing, so as to not impose undue hardship on Mr. White.

DECISION

The appeal committee was of the view that its responsibility in this matter was to make sure that the discipline committee correctly understood the principles of law and procedure which govern it and properly applied those principles to the facts of the particular case. With respect to the question of sanction the appeal committee was aware of the reasons of Mr. Justice Cory in Re Stevens and the Law Society of Upper Canada. Knowing that imposing a sanction is a difficult matter, the appeal committee saw that its task was to make sure that the principles which govern the imposition of sanction were understood and properly applied.

The appeal committee was also guided by the decision of "R. vs. Basha" (1950), 61 A.P.R. 23 Nfld. S.P.E.I.R. 286 at p. 299, which states

... a court of appeal should only interfere with a trial judge's discretionary powers as to sentencing if it is apparent that the judge has misapplied one or other of the accepted principles of sentencing, in all the circumstances of the case, with the result that the sentence imposed is outside the range of sentencing for that type of offence.

In its review of the facts before it, the appeal committee determined that the discipline committee appeared to err in their finding that no other party was involved. The appeal committee concluded that the Government of Canada and the taxpayers of Canada were the parties that were hurt by Mr. White's action.

In cases such as Finkelman and Granatstein, the principles of sentencing as it applies to publication also apply generally in this case. The discipline committee was seized with the task of balancing the issues of specific deterrence, general deterrence and rehabilitation and applying these principles giving due consideration to the facts and the sentences imposed in similar cases.

The appeal committee also studied the cases of Goodman, Ferri, Baillie Lutvak and Haar to determine if there were any similarities to Mr. White's circumstances. The appeal committee agreed with the discipline committee that the distinguishing factor in the Goodman case had been that Mr. Goodman had already been dealt with in the primary jurisdiction of Quebec which renders that case entirely inappropriate as a reliable precedent for this appeal and Cross-Appeal. The committee also agreed that the Institute cases of Ferri, Baillie and Lutvak are distinguishable from that of Mr. White in that they all involve misconduct resulting in financial losses to either clients or employers, whereas Mr. White's misconduct related only to his personal tax affairs and did not involve clients or other parties with the exception of Revenue Canada. The panel agreed that income tax evasion cannot be condoned and any sanction imposed must reflect the seriousness with which such conduct is viewed by the profession.

APPLICATION OF THE THOMAS HAAR DECISION:

The committee felt that there was a distinct difference between this case and that of Thomas Haar.

- 1) Mr. White did not involve clients or other third parties although, like Mr. Haar, he did evade the payment of income taxes otherwise owing.
- 2) Mr. White did not forge or change any document.
- 3) Mr. Haar was guilty of professional misconduct while practicing as a chartered accountant whereas Mr. White was found guilty of professional misconduct in the filing of his personal income tax returns.

The panel agreed that the discipline committee clearly gave consideration to the principles of general deterrence, specific deterrence and rehabilitation. They also agreed with the discipline committee that the principle of general deterrence must take precedence over others in this matter. The panel concluded that a two year suspension, coupled with a fine of \$10,000 was appropriate.

The panel agreed with Mr. Morrison in that the discipline committee erred in point 4 of their Order that Mr. White's fellowship in the Institute be revoked. The Council elects members as FCAs and therefore only the Council can technically revoke an FCA. However, the appeal committee agreed that Mr. White should not be entitled to use his FCA designation or be referred to as a Fellow of the Institute. Therefore, the appeal committee stated that paragraph 4 of the Order would be varied and as varied read as follows:

- "4. That upon the expiration of the suspension of all his rights and privileges of membership as provided for in paragraph #3 above, Mr. White's right and privilege to call himself a Fellow of the Institute and use the initials FCA shall be suspended for as long as he remains a Member; and that unless Council at a time subsequent to this date votes to make him a Fellow of the Institute, he shall not enjoy that privilege again."

The panel upheld the balance of the Order as originally stated by the discipline committee on June 5, 1991.

In regard to the effective date of the suspension, the panel pointed out to Mr. Morrison that under the Bylaws of the Institute, they had no power to back date the commencement of the suspension to the date of the discipline committee hearing and that it could only commence from the date of this Decision and Order becoming final under the Bylaws of the Institute.

SIGNED AT TORONTO, this 24th day of July, 1992

C.S. BARLTROP, FCA – CHAIR OF THE HEARING

Appeal Committee Members of the Hearing.

J.M. Allinotte, FCA; A. Brown; W.G. Brown, FCA;
D.T. McClurkin, CA; R.E.A. Parisi, CA

APPEAL COMMITTEE re George Donald White

ORDER OF THE APPEAL COMMITTEE IN THE MATTER OF: An appeal dated August 16, 1991, lodged by the professional conduct committee, against the decision and order of the discipline committee made on June 5, 1991, regarding Mr. George D. White, FCA, a member of the Institute, pursuant to *The Chartered Accountants Act* and the Bylaws pursuant to the Act. And a cross-appeal, dated September 23, 1991, lodged on behalf of Mr. George D. White, FCA, against the decision and order of the discipline committee, made on June 5, 1991, pursuant to *The Chartered Accountants Act* and the Bylaws pursuant to the Act.

ORDER

A panel of the appeal committee met on February 11, 1992 to consider an appeal filed by the professional conduct committee and a cross appeal filed on behalf of Mr. George D. White, FCA, against the decision and order of the discipline committee made on June 5, 1991.

The professional conduct committee was represented by its legal counsel Mr. Paul Farley. Mr. White attended and was represented by his legal counsel Mr. Ross Morrison.

The appeal panel after hearing the submissions of all parties and after reviewing the documentation that was before it makes the following order:

1. That the appeal filed on behalf of the professional conduct committee, be dismissed;
2. That the cross appeal filed on behalf of Mr. White be dismissed;
3. That the fourth paragraph of the Order of the discipline committee be varied to read as follows,

"That Mr. White's Fellowship in the Institute be suspended for as long as he remains a member of the Institute so that he shall not again enjoy the rights and privileges as a fellow of the Institute"; and

4. That in all other respects the decision and order of the discipline committee made on June 5, 1991 be confirmed in its entirety and that the order of the discipline committee become effective immediately.

The parties were advised that written reasons for this order would follow.

DATED T TORONTO this 18th day of February, 1992.

P.G. SCHOFIELD - SECRETARY.
APPEAL COMMITTEE