

Ghulam Mhayiuddin Malik: Summary, as Published in *CheckMark*

Ghulam Mhayiuddin Malik, of Mississauga, was found guilty of a charge under Rule 203.2 of failing to cooperate in the attempted inspection of his practice. After being charged, but prior to the hearing, he did cooperate with practice inspection. He was fined \$1,500.

CHARGE(S) LAID re Ghulam Mhayiuddin Malik

The Professional Conduct Committee hereby makes the following charges against Ghulam M. Malik, CA, a member of the Institute:

1. THAT, the said Ghulam M. Malik, in or about the period August, 1993 to September, 1994 failed to cooperate with officers, servants or agents of the Institute who were appointed to arrange or conduct a practice inspection, contrary to Rule 203.2 of the rules of professional conduct.
2. THAT, the said Ghulam M. Malik, in or about the period July, 1994 to September, 1994 failed to promptly reply in writing to a letter dated July 8, 1994 from an associate director of standards enforcement which specifically required a written reply, contrary to Rule 104 of the rules of professional conduct.

Dated at Toronto, this 20th day of September, 1994.

JENNIFER L. FISHER, CA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Ghulam Mhayiuddin Malik

DECISION AND ORDER IN THE MATTER OF: Charges against **GHULAM MHAYIUDDIN MALIK, CA**, a member of the Institute, under **Rules 104 and 203.1** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE FEBRUARY 2, 1995

DECISION

THAT, having seen, heard and considered the evidence, and having heard the plea of not guilty to charges Nos. 1 and 2, THE DISCIPLINE COMMITTEE FINDS Ghulam Mhayiuddin Malik not guilty of charge No. 2 and guilty of charge No. 1.

ORDER

IT IS ORDERED in respect of charge No. 1:

1. THAT Mr. Malik be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Malik be and he is hereby fined the sum of \$1,500, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Malik'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; and
 - (c) to the Canadian Institute of Chartered Accountants.
4. THAT in the event Mr. Malik fails to comply with the requirement of paragraph 2 of this Order within the time period therein specified, he shall thereupon be suspended from the rights and privileges of membership in the Institute, and notice of his suspension, disclosing his name, shall be given in the manner specified in paragraph 3 hereof.
5. THAT in the event Mr. Malik is suspended pursuant to paragraph 4 hereof, the suspension shall terminate upon his compliance with the requirement of paragraph 2 of this Order, provided that he complies within thirty (30) days from the date of his suspension.
6. THAT in the event Mr. Malik fails to terminate a suspension imposed pursuant to paragraph 4 hereof within the thirty (30) day period specified in paragraph 5, 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 3 hereof.

DATED AT TORONTO THIS 9TH DAY OF FEBRUARY, 1995
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Ghulam Mhayiuddin Malik

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **GHULAM MHAYIUDDIN MALIK, CA**, a member of the Institute, under **Rules 104 and 203.1** of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE FEBRUARY 2, 1995

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were held on January 17 and February 2, 1995. Ms. Deborah McPhadden attended on behalf of the professional conduct committee, and Mr. Malik attended with his counsel, Mr. Richard Zemla.

On January 17, the professional conduct committee amended charge No. 1 to read that the allegation was contrary to Rule 203.2 of the rules of professional conduct instead of Rule 203.1. Mr. Malik pleaded not guilty to the following charges as amended:

1. *THAT, the said Ghulam M. Malik, in or about the period August, 1993 to September, 1994 failed to cooperate with officers, servants or agents of the Institute who were appointed to arrange or conduct a practice inspection, contrary to Rule 203.2 of the rules of professional conduct.*
2. *THAT, the said Ghulam M. Malik, in or about the period July, 1994 to September, 1994 failed to promptly reply in writing to a letter dated July 8, 1994 from an associate director of standards enforcement which specifically required a written reply, contrary to Rule 104 of the rules of professional conduct.*

After the plea of not guilty was entered, the hearing was adjourned for two weeks at Mr. Zemla's request, as he was not ready to proceed. Counsel for the professional conduct committee objected to the adjournment, and the discipline committee was reluctant to grant it. But as Mr. Malik might have been prejudiced by proceeding when his counsel, solely through his or his firm's own fault, was not ready, the hearing was adjourned, peremptory to the member, to February 2, 1995.

Upon the resumption of the hearing on February 2, the professional conduct committee called as witnesses Mr. Grant Dickson, director of practice inspection, Ms. Jo-Anne Olafson, associate director of standards enforcement, and Ms. Ann Wait, administrative assistant to the director of practice inspection. Counsel led the witnesses through the document brief which was filed as an exhibit.

Counsel for Mr. Malik called Mr. Malik as a witness, who highlighted certain portions of the document brief during his testimony.

When the professional conduct committee had presented its case, counsel for the defence wanted to call only one witness, Ms. McPhadden, counsel for the professional conduct committee. The discipline committee recognized that Ms. McPhadden was a compellable witness, however, in this case, ruled that she would not be called as a witness, because her

evidence would not be helpful to the committee. Mr. Zemla said he wanted to ask Ms. McPhadden whether or not she had acknowledged that Mr. Malik had not received the letter of July 8, 1994. As the only evidence before the committee was that Mr. Malik had not received that letter, the committee did not think the evidence was necessary. The point was not in issue.

After reviewing the evidence presented, the discipline committee found Mr. Malik guilty of charge No. 1, and not guilty of charge No. 2.

As to charge No. 1, the committee felt that Mr. Malik had, indeed, failed to cooperate with the Institute, and that, in fact, he finally produced the required information only upon charges having been laid against him.

As to charge No. 2, the committee was not convinced by the evidence that Mr. Malik actually received the letter dated July 8, 1994 from the associate director of standards enforcement. He did not receive the version of the letter sent by registered mail, as evidenced by its return to the Institute with the post office's AUnclaimed@ notation stamped on the envelope. His testimony that he did not receive the version of the letter sent by regular mail was not contradicted. As a result, the committee had to find Mr. Malik not guilty of this charge.

Upon the issue of sanction, the committee heard testimony from Mr. Malik as to his present financial situation and status in the community. Both counsel then made their submissions as to the appropriate sanctions.

Upon deliberation the committee made the following order:

ORDER

IT IS ORDERED in respect of charge No. 1:

1. THAT Mr. Malik be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Malik be and he is hereby fined the sum of \$1,500, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Malik'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; and
 - (c) to the Canadian Institute of Chartered Accountants.
4. THAT in the event Mr. Malik fails to comply with the requirement of paragraph 2 of this Order within the time period therein specified, he shall thereupon be suspended from the rights and privileges of membership in the Institute, and notice of his suspension, disclosing his name, shall be given in the manner specified in paragraph 3 hereof.
5. THAT in the event Mr. Malik is suspended pursuant to paragraph 4 hereof, the suspension shall terminate upon his compliance with the requirement of paragraph 2 of this Order, provided that he complies within thirty (30) days from the date of his suspension.

6. THAT in the event Mr. Malik fails to terminate a suspension imposed pursuant to paragraph 4 hereof within the thirty (30) day period specified in paragraph 5, 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 3 hereof.

The reasons for the committee's 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 \$1,500, with a six-month term to pay. The discipline committee feels that a fine is important as both a general and a specific deterrent, and believes that a fine in the amount of \$1,500 will achieve both objectives. Given the member's weak financial position, the committee feels the time to pay as requested is reasonable.

Notice

The disciplinary process of a self-governing professional organization must be viewed by its members and the public as an open process. Counsel for the member asked that disclosure of Mr. Malik's name not be made, as it would jeopardize his future and cause disgrace within his community. He submitted that his client would be willing to pay a higher fine to compensate for the withholding of his name from publication.

Given the vigour with which many members before the discipline committee argue against publication of their names, it is very likely that if there was an opportunity to avoid publication by paying a higher fine, most would avail themselves of it. This would be a totally inappropriate application of the principles of sanctioning, and would go a long way toward removing meaningful deterrence from discipline committee orders. It is exactly the type of impact Mr. Zemla argues publication of Mr. Malik's name will have on his client that makes publication such an effective deterrent. As the discipline and appeal committees have indicated in the past, only in rare and unusual circumstances would it be appropriate to dispense with this powerful deterrent in a sanctions order.

The discipline committee did not find there to exist in this case those rare and unusual circumstances that might persuade it to withhold the member's name from publication, and therefore made its usual order as to the giving of notice.

DATED AT TORONTO, THIS DAY OF , 1995
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

P.B.A. CLARKSON, CA
F.J. DUNN, CA

P.A. GOGGINS, CA

P. RAYSON, CA

V.G. STAFL (Public representative)