

Gordon George Stewart: Summary, as Published in *CheckMark*

Gordon George Stewart, of St. Catharines, was found guilty of one charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest, one charge under Rule 202 of failing to perform his professional services with integrity, and one charge under Rule 205 of associating himself with reports, statements and representations which he knew or should have known were false and misleading. While employed as a company's chief financial officer, Mr. Stewart knowingly and willingly participated in the scheme of Joe Adrian Vos, his superior, to falsify and manipulate the books and records of the company. In supporting Mr. Vos' misappropriations from the company, Mr. Stewart engaged in a course of conduct of increasing deception over a two-year period. He was in a position of trust and abused that trust. Just prior to the discovery of the entire scheme, Mr. Stewart wrote a memo to Mr. Vos urging him to continue covering up the misappropriations and wrongdoing. Mr. Stewart was fined \$5,000, charged costs of \$4,000, and expelled from the Institute.

CHARGE(S) LAID re Gordon George Stewart

The Professional Conduct Committee hereby makes the following charges against Gordon G. Stewart, CA, a member of the Institute:

1. THAT the said Gordon G. Stewart, in or about the period January 1999 to October 2001, while employed as an accountant and/or chief financial officer for Metafore Corporation and/or its predecessor companies ("Metafore"), failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he knowingly participated in a scheme to falsify and manipulate the books and records of Metafore, contrary to Rule 201.1 of the rules of professional conduct.
2. THAT the said Gordon G. Stewart, in or about the period January 1999 to October 2001, while employed as an accountant and/or chief financial officer for Metafore Corporation and/or its predecessor companies ("Metafore"), failed to perform his professional services with integrity, contrary to Rule 202 of the rules of professional conduct, in that:
 - a) he failed to communicate to the auditors information that he knew or should have known was relevant to the financial position of the company, including information concerning the improper manipulation of the books and records of the company;
 - b) he failed to communicate to owners/shareholders of the company information which he knew or should have known materially affected the financial position of the company, including information concerning the improper manipulation of the books and records of the company.
3. THAT the said Gordon G. Stewart, in or about the period January 1999 to October 2001, while employed as an accountant and/or chief financial officer for Metafore Corporation and/or its predecessor companies, associated himself with reports, statements and representations which he knew or should have known were false and misleading, contrary to Rule 205 of the rules of professional conduct.

Dated at Toronto, Ontario this 26th day of September 2002.

D.D. MELOCHE, CA - DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Gordon George Stewart

DECISION AND ORDER IN THE MATTER OF: Charges against **GORDON GEORGE STEWART, CA**, a member of the Institute, under **Rules 201.1, 202 and 205** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE JANUARY 16, 2003

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, the Discipline Committee finds Gordon George Stewart guilty of charges Nos. 1, 2 and 3.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Stewart be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Stewart be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within two (2) years from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Stewart be and he is hereby charged costs fixed at \$4,000, to be remitted to the Institute within two (2) years from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Stewart be and he is hereby expelled from membership in the Institute.
5. THAT notice of this Decision and Order, disclosing Mr. Stewart's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
 - (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 St. Catharines Standard*.
6. THAT Mr. Stewart 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 20TH DAY OF JANUARY, 2003
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Gordon George Stewart

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **GORDON GEORGE STEWART, CA**, a member of the Institute, under **Rules 201.1, 202 and 205** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE JANUARY 16, 2003

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario convened on January 16, 2003 to hear charges brought by the professional conduct committee against Mr. Gordon Stewart, a member of the Institute.
2. The professional conduct committee was represented by Mr. Paul Farley, who was accompanied by Mr. Robert Fowlie. Mr. Stewart was present and represented by Ms. Cynthia Amsterdam.
3. The formal decision and order made on January 16, 2003 was signed by the committee secretary on January 20, 2003 and sent to Mr. Stewart that day. These reasons, given pursuant to Bylaw 574, include the charges, the decision and the order as well as the reasons of the discipline committee.

DECISION ON THE CHARGES

4. The charges laid by the professional conduct committee dated September 26, 2002 read as follows:
 1. THAT the said Gordon G. Stewart, in or about the period January 1999 to October 2001, while employed as an accountant and/or chief financial officer for Metafore Corporation and/or its predecessor companies ("Metafore"), failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he knowingly participated in a scheme to falsify and manipulate the books and records of Metafore, contrary to Rule 201.1 of the rules of professional conduct.
 2. THAT the said Gordon G. Stewart, in or about the period January 1999 to October 2001, while employed as an accountant and/or chief financial officer for Metafore Corporation and/or its predecessor companies ("Metafore"), failed to perform his professional services with integrity, contrary to Rule 202 of the rules of professional conduct, in that:
 - a) he failed to communicate to the auditors information that he knew or should have known was relevant to the financial position of the company, including information concerning the improper manipulation of the books and records of the company;
 - b) he failed to communicate to owners/shareholders of the company information which he knew or should have known materially affected the financial position of the company, including information concerning the improper manipulation of the books and records of the company.

3. THAT the said Gordon G. Stewart, in or about the period January 1999 to October 2001, while employed as an accountant and/or chief financial officer for Metafore Corporation and/or its predecessor companies, associated himself with reports, statements and representations which he knew or should have known were false and misleading, contrary to Rule 205 of the rules of professional conduct.
5. Mr. Stewart entered a plea of guilty to all three charges, and confirmed for the record that he understood that on the basis of his plea of guilty and on that basis alone he could be found guilty of the charges.
6. Mr. Farley gave a brief overview of the case for the professional conduct committee, and filed as exhibits an agreed statement of facts and a document brief which included, among other things, cheques, invoices and credit notes of Metafore Corporation, and an e-mail which Mr. Stewart sent to Mr. Joe Vos on September 27, 2001.
7. The essence of the misconduct alleged against Mr. Stewart was that while employed by Metafore Corporation (hereinafter referred to as Metafore), and its predecessor companies, he knowingly participated in the falsification and manipulation of the corporate books and records, through the deliberate misstatement of sales, accounts receivable, and funds drawn from the company. In addition, he associated himself with reports, statements and representations which he knew or should have known were false and misleading.
8. Upon deliberation, the panel concluded on the uncontradicted evidence that the charges had been proven and that Mr. Stewart was guilty of professional misconduct. When the hearing reconvened, the chair read the following decision into the record:

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, the Discipline Committee finds Gordon George Stewart guilty of charges Nos. 1, 2 and 3.

ORDER AS TO SANCTION

9. The parties disagreed in two respects as to the appropriate sanction to be ordered in this case. The professional conduct committee sought expulsion and a fine of between \$10,000 and \$15,000. The member, through his counsel, submitted that the appropriate sanction was a lengthy suspension and a substantially reduced fine.
10. Mr. Farley did not call evidence with respect to sanction. Ms. Amsterdam called Mr. Stewart, who testified on his own behalf, and Mr. Robert Shaver, who had trained in the same accounting firm as Mr. Stewart and who had known him for 19 years. She also filed a document brief on behalf of Mr. Stewart which contained thirteen letters of reference, including a letter from Mr. Marc D'Amour, CA, the Vice-President and Chief Financial Officer of Hartco Corporation, one of the corporate owners of Metafore; and a letter from Mr. Doug Whyte, FCA, senior partner of the accounting firm at which Mr. Stewart had trained to be a chartered accountant. The document brief also set out a monthly cash flow statement for Mr. Stewart.

11. Mr. Stewart testified that due to personal family problems he had been under considerable stress, and that when he was approached by Mr. Vos to recast certain monies withdrawn from the company in order to present them to the bank as trade accounts receivable, he was not strong enough to say no even though he knew it was wrong. He also indicated that he was ashamed of having written the September 27, 2001 e-mail memo which encouraged Mr. Vos to continue the subterfuge.

12. Mr. Farley submitted that Mr. Stewart engaged in a course of conduct of increasing deception over a two-year period, and that his actions amounted to very serious misconduct which constituted an attack on the reputation of the profession and a breach of the public's trust. Though Mr. Farley agreed that Mr. Stewart seemed remorseful now, his reading of the September 27, 2001 memo to Joe Vos, in which Mr. Stewart encouraged Mr. Vos to continue their deception when they were about to have their falsifications exposed, caused him to question where Mr. Stewart's sense of remorse was at that time. As well, Mr. Farley indicated that Mr. Stewart is not unique in suffering from stressful conditions in his daily life, and that most people are capable of managing stress in their daily lives without abandoning their moral compass.

13. Mr. Farley pointed out both aggravating and mitigating circumstances in this case. The aggravating circumstances were that Mr. Stewart was in a position of trust and abused that trust, he did not come forward voluntarily but was caught, he encouraged Mr. Vos to continue the deception, he deceived the bank and company shareholders who suffered considerable losses, and he carried on the deception for an extended period of time. Mitigating factors cited by Mr. Farley were that Mr. Stewart cooperated with the Institute and the investigator, he pleaded guilty to the charges and entered into an agreed statement of facts, and he did not benefit personally from his actions in the sense that he did not receive any of the misappropriated money.

14. Mr. Farley presented a book of authorities containing a number of discipline committee decisions which he put forward as precedents in this matter, and which supported his sanctions recommendation of a reprimand, a fine of between \$10,000 and \$15,000, expulsion from the Institute, costs of \$6,800, and the usual publicity.

15. Ms. Amsterdam emphasized that the panel was to be guided by the three sanctioning principles of general deterrence, specific deterrence and rehabilitation. She urged the panel to give priority to the principle of rehabilitation, as the discipline committee had in the cases of Michael Gary and Maria Messina. She pointed out that the Gary decision was appealed by the professional conduct committee, which had recommended expulsion, and that the appeal had been dismissed and the suspension upheld by the appeal committee, thereby emphasizing, in her submission, the importance of the principle of rehabilitation. She sought to liken Mr. Stewart's remorse and cooperation with Mr. D'Amour, both of which Mr. D'Amour confirmed in his letter, to the efforts of Ms. Messina to undo the damage that had been done at Livent.

16. Ms. Amsterdam submitted that there was no litmus test for expulsion, and that the panel was free to exercise its discretion to impose either a suspension or expulsion. She contrasted the misconduct of Mr. Stewart to the misconduct in other cases which had resulted in expulsion, including cases of theft, personal evasion of income taxes, assisting a client evade income taxes, and misappropriation of money involving significant breach of trust.

17. Ms. Amsterdam asserted that Mr. Stewart was on the road to rehabilitation, and that a lengthy suspension would address the three principles of sanctioning. She submitted that while Mr. Stewart had not been strong enough to stand up to Mr. Vos during a time of great stress in his life, he had learned his lesson and the panel could have confidence that he would not make the same mistake in future. Accordingly, she stated, the discipline committee did not need to be concerned that Mr. Stewart would pose a risk to the public if he continued to hold the CA designation.

18. Ms. Amsterdam presented an analysis of various discipline cases to support her sanctions recommendation of a reprimand, a fine of between \$5,000 and \$7,500 with time to pay, a suspension which she conceded could be lengthy, a period of supervision, and the usual publicity.

19. After hearing submissions from both parties, the panel deliberated, following which the chair read into the record the terms of the order. The formal written order reads as follows:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Stewart be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Stewart be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within two (2) years from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Stewart be and he is hereby charged costs fixed at \$4,000, to be remitted to the Institute within two (2) years from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Stewart be and he is hereby expelled from membership in the Institute.
5. THAT notice of this Decision and Order, disclosing Mr. Stewart's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
 - (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 St. Catharines Standard*.
6. THAT Mr. Stewart 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

20. The panel ordered that Mr. Stewart be reprimanded in writing by the chair of the hearing in order to stress to him the unacceptable nature of his actions.

Fine

21. Though the fine levied was less than that sought by Mr. Farley, the panel felt a fine of \$5,000 was significant enough in Mr. Stewart's circumstances to serve both as a specific and general deterrent. The panel took into account Mr. Stewart's expressions of remorse, as well as the fact that he did not personally benefit from his actions. Taking into account his personal financial situation, it was considered appropriate to provide two years to pay the fine.

Costs

22. The panel felt that costs of \$4,000 would be reasonable in this case, taking into account Mr. Stewart's cooperation, again with two years to pay.

Expulsion

23. The panel considered carefully the alternatives of expulsion and suspension, and took into account the various aggravating and mitigating factors as well as the submissions of both counsel. Ultimately, the panel could not ignore the fact that Mr. Stewart had been a willing participant with Mr. Vos in the manipulation of the records of Metafore from the first time he was asked to falsify records. The scheme continued for some time, and the memo Mr. Stewart wrote on September 27, 2001 urged Mr. Vos to continue to cover up the misappropriations and wrongdoing. This memo reads very much like it was written by a co-conspirator rather than by someone who was simply unable to stand up to the right principles when subjected to pressure. Mr. Stewart's conduct on September 27, 2001, immediately before the wrongdoing was discovered, stands in stark contrast to the conduct of Ms. Messina, who, at considerable personal and professional risk, faced up to her earlier failure to act appropriately and tried to remedy a bad situation to the extent that she could.

24. The panel was sympathetic to the personal stresses with which Mr. Stewart was dealing, but was also mindful of the many stressful situations which members of our profession are called upon to deal with regularly. Mr. Stewart described the firm at which he had trained as a chartered accountant as being like a family. His unwillingness or inability to seek help from his old firm, even if only to seek assistance in the securing of alternative employment to take him away from the corrupt influence of Mr. Vos, is another indication of his willingness to help facilitate the misappropriations. His personal problems did not excuse his behaviour, and expulsion is both the appropriate specific deterrent for a member who participates so willingly for so long in such a scheme as perpetrated in this case, and the appropriate general deterrent to dissuade like-minded members from participating in such schemes.

Notice

25. Publishing the names of members found guilty of professional misconduct is the single most effective specific and general deterrent available to a disciplinary tribunal of a self-governing professional body. In addition to its great usefulness as deterrence, publication serves to inform the general membership of the profession, and the public which places its trust in the profession, that misconduct will not be covered up or lightly treated, but will be appropriately and seriously dealt with by the discipline process. The panel made the normal order as to notice in expulsion cases, which includes newspaper publication as well as publication in *CheckMark*, disclosing the member's name.

Return of Certificate

26. Members' certificates of membership in the Institute are, pursuant to Bylaw 305(2), the property of the Institute, and are to be returned to the Institute upon loss of membership. As Mr. Stewart was ordered to be expelled from the Institute, he is required to surrender his membership certificate.

DATED AT TORONTO THIS 28TH DAY OF MAY, 2003
BY ORDER OF THE DISCIPLINE COMMITTEE

H.B. BERNSTEIN, CA – DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

P.M. CLEVELAND, FCA
R.I. COWAN, CA
D.L. FLEWELLING, CA
M.L. MACKAY BREHM, FCA
S.J. MURRAY (Public representative)