

James Grant: Summary, as Published in *CheckMark*

James Grant, of Toronto, was found guilty of one charge under Rule 203.1 of failing to sustain his professional competence by keeping himself informed of, and complying with, developments in professional standards in all functions in which he practised; one charge under Rule 204.4 of failing to disclose in his written report accompanying financial statements an influence, interest or relationship which, in respect of the engagement, would be seen by a reasonable observer to impair his professional judgment or objectivity; and one charge under Rule 206 of failing to perform his professional services in accordance with generally accepted standards of practice of the profession. While engaged to perform a review of a company's financial statements, Mr. Grant failed to ensure that goodwill was amortized, disclosure of related party transactions was made, and bank loans were included on the balance sheet as a corporate liability. He also failed to obtain an engagement letter, and improperly classified a balance sheet item as a current asset when it was long term. Being unaware of the requirement to maintain objectivity on review engagements, Mr. Grant accepted such an engagement for a company knowing his brother was the sole shareholder, and failed to disclose the fact in a Notice to Reader communication he attached to the company's financial statements. He was fined \$4,000 and ordered to complete five professional development courses. It was also ordered that his practice be supervised for a specified period of time, and that, prior to the end of the period of supervision, he be reinvestigated by the professional conduct committee. Mr. Grant's appeal of the discipline committee's decision and order was dismissed by the appeal committee.

CHARGE(S) LAID re James Grant

The Professional Conduct Committee hereby makes the following charges against James Grant, CA, a member of the Institute:

1. THAT, the said James Grant, in or about the period December 31, 1995 through April 30, 1996, while engaged to perform an audit of the financial statements of Royal Oak Securities Corporation, as at December 31, 1995, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the *CICA Handbook*, contrary to Rule 206 of the rules of professional conduct, in that,
 - (a) he failed to ensure that the inventory of marketable securities shown on the balance sheet as "Inventory (Note2) \$111,351" were carried at the lower of cost and market value;
 - (b) he failed to obtain sufficient appropriate audit evidence to support the balance sheet item "Inventory (Note2) \$111,351";
 - (c) he failed to ensure disclosure of related party transactions including the purchase and sale of securities between Royal Oak Securities Corporation and the principal shareholder which were material in nature;
 - (d) he failed to ensure disclosure of the nature of the relationship between the related parties that were referred to in note 3 to the financial statements;
 - (e) he failed to obtain an engagement letter;
 - (f) he failed to ensure that the cash position disclosed in the statement of changes in financial position at the end of the 1994 year as \$1,031 agreed with the cash position shown on the balance sheet as the 1994 comparative figure in the amount of \$3,382;
 - (g) he improperly disclosed, in the statement of changes in financial position, advances to shareholders and to related parties as operating activities.
2. THAT, the said James Grant, in or about the period December 31, 1996 through May 30, 1997, while engaged to perform a review of the financial statements of Royal Oak Securities Corporation, as at December 31, 1996, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the *CICA Handbook*, contrary to Rule 206 of the rules of professional conduct, in that,
 - (a) he failed to ensure disclosure of related party transactions involving the purchase and sale of securities between Royal Oak Securities Corporation, a related corporation, and the principal shareholder which were material in nature;

- (b) he failed to obtain an engagement letter;
 - (c) he improperly disclosed, in the statement of changes in financial position, advances to shareholders and to related parties as operating activities;
 - (d) he improperly described in note 1(a) an accounting policy which does not apply to the financial statements;
 - (e) he improperly classified the balance sheet item "loan receivable note 3 \$290,000." as short term when it was long term;
 - (f) he failed to ensure disclosure of the nature of the relationship of related parties that were referred to in note 4 to the financial statements.
3. THAT, the said James Grant, in or about the period December 31, 1996 through May 30, 1997, while engaged to perform a review of the financial statements of Birchmount Collision (1995) Inc., as at December 31, 1996, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the *CICA Handbook*, contrary to Rule 206 of the rules of professional conduct, in that,
- (a) he failed to ensure that Goodwill, shown on the balance sheet in the amount of \$930,569., was amortized;
 - (b) he failed to ensure disclosure of related party transactions including rent paid by Birchmount Collision to a company owned by its shareholders;
 - (c) he failed to take adequate steps to satisfy himself that the parts inventory shown on the balance sheet in the amount of \$30,000 was plausible when he knew it was not counted and was an estimated amount only;
 - (d) *WITHDRAWN BY P.C.C.*;
 - (e) he failed to ensure that bank loans in the approximate amount of \$410,000. referred to in note 3, were included on the balance sheet as a corporate liability;
 - (f) he failed to obtain an engagement letter;
 - (g) he improperly classified the balance sheet item "loan receivable note 5 \$100,000." as a current asset when it was long term;
 - (h) he improperly classified the loan receivable in the amount of \$100,000. on the statement of changes in financial position as operating when it was investing and the loan from a related party in the amount of \$100,000. as investing when it should have been classified as financing.

4. THAT, the said James Grant, in or about the period September 30, 1995 through July 22, 1996, while engaged to perform a review of the financial statements of 1040100 Ontario Inc., as at September 30, 1995, failed to sustain his professional competence by keeping himself informed of, and complying with, developments in professional standards in all functions in which the member practiced, contrary to Rule 203.1 of the rules of professional conduct, in that,
 - (a) he was unaware of the requirement to maintain objectivity on review engagements and accepted the engagement to carry out the review of the financial statements of 1040100 Ontario Inc. knowing his brother, Gary Grant, was the sole shareholder of the company;
5. THAT, the said James Grant, on or about July 22, 1996, signed a Notice to Reader communication attached to the financial statements of 1040100 Ontario Inc., as at September 30, 1995, and did fail to disclose in his written report accompanying the financial statements an influence, interest or relationship which, in respect of the engagement, would be seen by a reasonable observer to impair the member's professional judgement or objectivity, contrary to Rule 204.4 of the rules of professional conduct, in that;
 - a) he failed to disclose that the sole shareholder of the company was his brother, Gary Grant.
6. THAT, the said James Grant, on or about July 22, 1996, signed a Notice to Reader report attached to the financial statements of 1040100 Ontario Inc. and in doing so failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206 of the rules of professional conduct, in that;
 - (a) he failed to ensure that corporate bank loans in the approximate amount of \$200,500. were included on the balance sheet as a corporate liability;
 - (b) he failed to obtain an engagement letter.

Dated at Toronto this 21st day of May, 1998.

DOUGLAS BOUFFORD, CA – DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re James Grant

DECISION IN THE MATTER OF: Charges against JAMES GRANT, CA, a member of the Institute, under Rules 203.1, 204.4 and 206 of the Rules of Professional Conduct, as amended.

DECISION MADE OCTOBER 1, 1998

THAT, having seen, heard and considered the evidence, the Discipline Committee finds James Grant:

1. Not guilty of charge No. 1, in that particular (g) was not proven, and that, while particulars (a), (b), (c), (d), (e) and (f) were proven, the member's departures from the standards of the profession did not amount to professional misconduct.
2. Not guilty of charge No. 2, in that particulars (c) and (d) were not proven, and that, while particulars (a), (b), (e) and (f) were proven, the member's departures from the standards of the profession did not amount to professional misconduct.
3. Guilty of charge No. 3, in that, while particulars (c) and (h) were not proven, and particular (d) was withdrawn, particulars (a), (b), (e), (f) and (g) were proven, and constituted professional misconduct.
4. Guilty of charge No. 4, in that particular (a) was proven, and constituted professional misconduct.
5. Guilty of charge No. 5, in that particular (a) was proven, and constituted professional misconduct.
6. Not guilty of charge No. 6, in that particulars (a) and (b) were not proven.

DATED at Toronto, this 5th day of October, 1998.

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

DISCIPLINE COMMITTEE re James Grant

ORDER IN THE MATTER OF: Charges against JAMES GRANT, CA, a member of the Institute, under Rules 203.1, 204.4 and 206 of the Rules of Professional Conduct, as amended.

ORDER MADE OCTOBER 19, 1998

Having, on October 1, 1998, found James Grant guilty of three (3) charges of professional misconduct under Rules of Professional Conduct 203.1, 204.4 and 206, and having today heard submissions from the parties as to sanction, the Discipline Committee orders in respect of the charges:

1. THAT Mr. Grant be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Grant be and he is hereby fined the sum of \$4,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Grant be and he is hereby required to complete, by attending in their entirety, within eighteen (18) months from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute:

1. Accounting, Auditing and Professional Practice Update;
2. Accounting Refresher;
3. Financial Statement Presentation and Disclosure;
4. Audit of a Small Business; and
5. Review and Compilation Engagements,

or, in the event a course listed above becomes unavailable, the successor course which takes its place.

4. THAT Mr. Grant be and he is hereby required to complete a period of supervised practice upon the following terms and conditions:
 - (a) the term of the supervised practice shall be two (2) years from the date this Decision and Order becomes final under the bylaws;
 - (b) the cost of the supervised practice shall be borne by Mr. Grant;
 - (c) the supervisor shall report to the professional conduct committee every six (6) months;
 - (d) Mr. Grant shall nominate the supervisor subject to professional conduct committee approval;
 - (e) the supervisor shall be actively involved in the practice of public accounting, and have received a satisfactory practice inspection report within four (4) years immediately preceding the date this Decision and Order becomes final under the bylaws;
 - (f) the supervisor shall review all files pertaining to audit, review and compilation engagements, and shall evidence such review by signing the working papers prior to release of the financial statements; and
 - (g) in the event the professional conduct committee finds Mr. Grant's choice of supervisor unacceptable, or there is any other issue relating to supervised practice about which Mr. Grant and the professional conduct committee cannot

agree, either may apply to the chair of the panel or to the chair of the discipline committee at an assignment hearing for directions.

5. THAT Mr. Grant be reinvestigated by the professional conduct committee, or by a person retained by the professional conduct committee, on one occasion, during the last six (6) months of the supervised practice period, the costs of the reinvestigation, up to \$2,000, to be paid by Mr. Grant within thirty (30) days of receiving notification of the cost of the reinvestigation.
6. THAT notice of this Decision and Order, disclosing Mr. Grant'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*.
7. THAT in the event Mr. Grant fails to comply with any of the requirements 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 6 hereof, and by publication in *The Globe and Mail*.

DATED AT TORONTO THIS 27TH DAY OF OCTOBER, 1998
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re James Grant

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against JAMES GRANT, CA, a member of the Institute, under Rules 203.1, 204.4 and 206 of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION MADE OCTOBER 1, AND ORDER MADE OCTOBER 19, 1998

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario convened on August 27 and 28, September 30, and October 1, 1998 to hear evidence concerning six charges brought against James Grant, CA, by the professional conduct committee. The panel found Mr. Grant guilty of three of the six charges laid, and therefore reconvened on October 19, 1998 to hear submissions and make a decision on sanction.

The professional conduct committee was represented by Mr. Paul Farley. Mr. Grant was present without legal counsel, and represented himself throughout the proceedings. He acknowledged that he was aware of his right to be represented by counsel, and that he had been made aware of this right prior to the hearing.

Six charges had been laid against Mr. Grant. Four of the charges related to Rule of Professional Conduct 206, alleging that Mr. Grant had failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the *CICA Handbook*. A fifth charge alleged that he had failed to sustain his professional competence by keeping himself informed of, and complying with, developments in professional standards in all functions in which he practiced, contrary to Rule of Professional Conduct 203.1. The final charge alleged that Mr. Grant had failed to disclose in his written report accompanying financial statements an influence, interest or relationship which, in respect of the engagement, would be seen by a reasonable observer to impair the member's professional judgment or objectivity, contrary to Rule of Professional Conduct 204.4.

The charges read as follows:

1. *THAT, the said James Grant, in or about the period December 31, 1995 through April 30, 1996, while engaged to perform an audit of the financial statements of Royal Oak Securities Corporation, as at December 31, 1995, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206 of the rules of professional conduct, in that,*
 - (a) *he failed to ensure that the inventory of marketable securities shown on the balance sheet as "Inventory (Note2) \$111,351" were carried at the lower of cost and market value;*
 - (b) *he failed to obtain sufficient appropriate audit evidence to support the balance sheet item "Inventory (Note2) \$111,351";*

- (c) *he failed to ensure disclosure of related party transactions including the purchase and sale of securities between Royal Oak Securities Corporation and the principal shareholder which were material in nature;*
 - (d) *he failed to ensure disclosure of the nature of the relationship between the related parties that were referred to in note 3 to the financial statements;*
 - (e) *he failed to obtain an engagement letter;*
 - (f) *he failed to ensure that the cash position disclosed in the statement of changes in financial position at the end of the 1994 year as \$1,031 agreed with the cash position shown on the balance sheet as the 1994 comparative figure in the amount of \$3,382;*
 - (g) *he improperly disclosed, in the statement of changes in financial position, advances to shareholders and to related parties as operating activities.*
2. *THAT, the said James Grant, in or about the period December 31, 1996 through May 30, 1997, while engaged to perform a review of the financial statements of Royal Oak Securities Corporation, as at December 31, 1996, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206 of the rules of professional conduct, in that,*
- (a) *he failed to ensure disclosure of related party transactions involving the purchase and sale of securities between Royal Oak Securities Corporation, a related corporation, and the principal shareholder which were material in nature;*
 - (b) *he failed to obtain an engagement letter;*
 - (c) *he improperly disclosed, in the statement of changes in financial position, advances to shareholders and to related parties as operating activities;*
 - (d) *he improperly described in note 1(a) an accounting policy which does not apply to the financial statements;*
 - (e) *he improperly classified the balance sheet item "loan receivable note 3 \$290,000." as short term when it was long term;*
 - (f) *he failed to ensure disclosure of the nature of the relationship of related parties that were referred to in note 4 to the financial statements.*
3. *THAT, the said James Grant, in or about the period December 31, 1996 through May 30, 1997, while engaged to perform a review of the financial statements of Birchmount Collision (1995) Inc., as at December 31, 1996, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206 of the rules of professional conduct, in that,*

- (a) *he failed to ensure that Goodwill, shown on the balance sheet in the amount of \$930,569., was amortized;*
 - (b) *he failed to ensure disclosure of related party transactions including rent paid by Birchmount Collision to a company owned by its shareholders;*
 - (c) *he failed to take adequate steps to satisfy himself that the parts inventory shown on the balance sheet in the amount of \$30,000 was plausible when he knew it was not counted and was an estimated amount only;*
 - (d) *he failed to take adequate steps to analyze the item on the schedule of operating expenses "computer rentals \$29,580." to determine if they met the criteria for capital leases;*
 - (e) *he failed to ensure that bank loans in the approximate amount of \$410,000. referred to in note 3, were included on the balance sheet as a corporate liability;*
 - (f) *he failed to obtain an engagement letter;*
 - (g) *he improperly classified the balance sheet item "loan receivable note 5 \$100,000." as a current asset when it was long term;*
 - (h) *he improperly classified the loan receivable in the amount of \$100,000. on the statement of changes in financial position as operating when it was investing and the loan from a related party in the amount of \$100,000. as investing when it should have been classified as financing.*
4. *THAT, the said James Grant, in or about the period September 30, 1995 through July 22, 1996, while engaged to perform a review of the financial statements of 1040100 Ontario Inc., as at September 30, 1995, failed to sustain his professional competence by keeping himself informed of, and complying with, developments in professional standards in all functions in which the member practiced, contrary to Rule 203.1 of the rules of professional conduct, in that,*
- (a) *he was unaware of the requirement to maintain objectivity on review engagements and accepted the engagement to carry out the review of the financial statements of 1040100 Ontario Inc. knowing his brother, Gary Grant, was the sole shareholder of the company;*
5. *THAT, the said James Grant, on or about July 22, 1996, signed a Notice to Reader communication attached to the financial statements of 1040100 Ontario Inc., as at September 30, 1995, and did fail to disclose in his written report accompanying the financial statements an influence, interest or relationship which, in respect of the engagement, would be seen by a reasonable observer to impair the member's professional judgement or objectivity, contrary to Rule 204.4 of the rules of professional conduct, in that;*
- (a) *he failed to disclose that the sole shareholder of the company was his brother, Gary Grant.*

6. *THAT, the said James Grant, on or about July 22, 1996, signed a Notice to Reader report attached to the financial statements of 1040100 Ontario Inc. and in doing so failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206 of the rules of professional conduct, in that;*
- (a) he failed to ensure that corporate bank loans in the approximate amount of \$200,500. were included on the balance sheet as a corporate liability;*
 - (b) he failed to obtain an engagement letter.*

At one point during the proceedings, particular (d) of charge No. 3 was withdrawn by the professional conduct committee.

Mr. Grant entered a plea of not guilty to charges Nos. 1, 2, 3, 4 and 6, and a plea of guilty to charge No. 5. The chair of the panel cautioned Mr. Grant that upon the basis of his guilty plea to charge No. 5, and upon that basis alone, the discipline committee could find him guilty of that charge. Mr. Grant indicated that he understood the caution, and the ramifications of his guilty plea.

DECISION ON THE CHARGES

The Evidence and Sumissions

Counsel for the professional conduct committee called Michael Cashion, CA, the investigator, as a witness. Mr. Farley led the panel through the 56 page document brief filed as an exhibit, which included financial statements and relevant working papers from Mr. Grant's file, together with correspondence between Mr. Grant and the Institute. The investigator explained the document brief as it pertained to each particular of each charge. Mr. Grant cross-examined the witness in detail.

Mr. Cashion's evidence concluded August 28, 1998. As Mr. Farley said he had completed the case for the professional conduct committee, the hearing was adjourned to September 30, 1998, at which time Mr. Grant began his defence by making an opening statement, and was then sworn and gave evidence. He filed a number of exhibits during the course of his evidence.

In the late afternoon of September 30, 1998, Mr. Grant said that while he had pleaded guilty to charge No. 5, and had told the investigator that his brother was the sole shareholder of 1040100 Ontario Inc., it had just occurred to him that, in fact, the shares of the company were owned by a family trust, the beneficiaries of which were his brother's children.

Mr Grant also stated on September 30 that he may have made a mistake in pleading guilty to charge No. 5 because, while he freely admitted the conduct described in the charge, it was his contention that this conduct did not amount to professional misconduct. When asked by the chair, however, if he was now changing his guilty plea on charge No. 5 to one of not guilty, the member declined to do so.

On the morning of October 1, 1998, Mr. Grant requested an adjournment for a number of hours so that he could obtain documents from a lawyer to establish who the shareholders of the company were. He stated that, while he was not certain this would establish a defence to charge No. 5, he wanted to explore the possibility. It became apparent during the exchange with respect to this request that Mr. Grant's brother was the CEO of the company, and that the only other person who took part in the management of the company was Mr. Grant himself, who, in effect, acted as the bookkeeper and CFO. In these circumstances the panel did not grant an adjournment, as it seemed clear that, even if the company was owned by a family trust, this fact would not provide a defence to the charge.

At the conclusion of Mr. Grant's case on October 1, Mr. Farley indicated the professional conduct committee would not be calling evidence in reply. The panel then heard submissions with respect to the charges. Mr. Farley summarized the evidence and made reference to the documents. Mr. Grant contended that he ought not to have been charged. He said the charges resulted from a sloppy investigation, an investigator's report prepared without one bit of member input, and a refusal on the part of the Institute to acknowledge that there were members who 'practiced from their basements'. He characterized the prosecution as a 'witch hunt'.

The Deliberations

While the members of the panel agreed that they had seen better investigations of members conducted by the professional conduct committee, nevertheless the panel found Mr. Grant's attitude difficult to understand. For example, with respect to charge No. 5, whereas he admitted in a letter to the associate director of standards enforcement that he had been unaware of the objectivity requirement of the profession when he had undertaken the review engagement for his brother's company, he contended at the hearing that there was no evidence that he had, in fact, undertaken a review engagement, even though each page of the financial statements said "see Review Engagement Report". Further, he submitted that the letter should not be considered at all because he never would have written it had he known that he might be charged as a result.

The panel came to the view that some of the allegations set out in the charges were of a minor nature which did not clearly amount to breaches of the standards of the profession. Mr. Grant submitted that the standard of proof the professional conduct committee had to satisfy required 'clear, cogent, forceful and compelling' evidence, and that the prosecution had not satisfied that onus.

When the panel began to deliberate, it became apparent that our deliberations would take some time, and that it would be unreasonable to ask the parties and reporter to remain until we reached a decision. Accordingly, the panel recalled the parties, set a provisional date for the resumption of the hearing, to deal with the issue of sanction in the event there was a finding of guilty made on one or more of the charges, and excused them for the day, advising them that they would be told of the outcome of the panel's deliberations by the committee secretary.

The Decision

After deliberating, the panel reached the following decision, which was communicated to both parties:

THAT, having seen, heard and considered the evidence, the discipline committee finds James Grant:

1. Not guilty of charge No. 1, in that particular (g) was not proven, and that, while particulars (a), (b), (c), (d), (e) and (f) were proven, the member's departures from the standards of the profession did not amount to professional misconduct.
2. Not guilty of charge No. 2, in that particulars (c) and (d) were not proven, and that, while particulars (a), (b), (e) and (f) were proven, the member's departures from the standards of the profession did not amount to professional misconduct.
3. Guilty of charge No. 3, in that, while particulars (c) and (h) were not proven, and particular (d) was withdrawn, particulars (a), (b), (e), (f) and (g) were proven, and constituted professional misconduct.
4. Guilty of charge No. 4, in that particular (a) was proven, and constituted professional misconduct.
5. Guilty of charge No. 5, in that particular (a) was proven, and constituted professional misconduct.
6. Not guilty of charge No. 6, in that particulars (a) and (b) were not proven.

During the course of the hearing, it became apparent that one of the defences raised by the member to every charge, even charge No. 5 to which Mr. Grant pleaded guilty, was that even if the allegations were proven, the departures from the required standard were not so significant that there should be a finding of professional misconduct.

During its deliberations, the panel first decided whether or not the particulars to the various charges had been proven, and then proceeded to determine whether or not the particulars amounted to professional misconduct.

Mr. Grant was found not guilty of charges Nos. 1, 2 and 6. Even though some of the allegations set out in the particulars to charges Nos. 1 and 2 were proven, and his conduct did not demonstrate a mastery of all of the issues to which those charges related, the panel concluded that the departures from the accepted standard were not so marked as to constitute professional misconduct. As to charge No. 6, the panel came to the conclusion that the particulars set out under the charge had simply not been proven by the professional conduct committee.

The panel found Mr. Grant guilty of charges Nos. 3, 4 and 5. There was no doubt about the fundamental importance of the objectivity requirement of the profession, nor about Mr. Grant's failure to adhere to the requirement, which, even at the hearing, it appeared he did not understand. The panel also concluded that the departures from the required standard set out in those particulars of charge No. 3 which had been proven amounted to professional misconduct.

ORDER AS TO SANCTIONS

The hearing resumed on October 19, 1998 to address the issue of sanctions relating to the charges of which Mr. Grant had been found guilty. As Mr. Farley and Mr. Grant advised that they were not intending to call evidence on sanctions, the panel asked them to proceed with submissions.

These are the reasons for the panel's order, and, in light of what transpired, we have set out the basic submissions made by both parties.

Submissions on Behalf of the Professional Conduct Committee

Mr. Farley filed copies of disciplinary decisions and orders that had been made against Mr. Grant in two prior discipline cases, one commenced by charges laid in 1983, and the other by charges laid in 1991, and pointed out that the decision of this panel was therefore the third finding of professional misconduct made against Mr. Grant.

Mr. Farley then set out the professional conduct committee's perspective as to the issues which had to be addressed in the sanctions order in this case, and the order which he had been instructed to seek. In summary, he made the following submissions:

1. The professional conduct committee concluded that Mr. Grant does not maintain the standards of the profession. The objectivity requirement is a basic concept and fundamentally important, but the member does not know it or apply it, as he admitted in his letter of December 1996 to the associate director of standards enforcement. Thereafter, he said to the professional conduct committee, and to some extent to this discipline panel 'don't trouble me with these minor problems, I am a sole practitioner - leave me alone'. Mr. Grant does not recognize that the standards of practice apply to everyone, including him as a sole practitioner, and that he does not meet those standards. Furthermore, he shows little remorse or regret about this.
2. The issue which the professional conduct committee thought was essential to address, in light of the member's past convictions, was not just how to rehabilitate Mr. Grant, but how to specifically deter him from similar misconduct in the future. Whereas the approach taken by the discipline committee in the two previous cases had been rehabilitative, the order in this case must, in addition, address the principle of specific deterrence. None of the charges in 1983, 1991 and 1998 were charges of moral turpitude, and, in some respects, they were relatively minor breaches of the rules of professional conduct. Nevertheless, the findings on the charges were that Mr. Grant was guilty of professional misconduct, and the disciplinary process of the Institute cannot be called upon to deal with Mr. Grant every six to eight years.

3. The sanctions being sought by the professional conduct committee, which would, it was submitted, give the appropriate emphasis to the three applicable principles of specific deterrence, general deterrence and rehabilitation, were the following:

- a written reprimand from the chair of the panel, to stress to the member the unacceptability of his conduct;
- a fine in the range of \$3,000 to \$5,000, to specifically deter the member from similar conduct in the future;
- supervised practice for 24 months, to ensure that the public is protected;
- the taking of specified professional development courses, to facilitate rehabilitation;
- reinvestigation of the member's practice, to ensure there has been rehabilitation; and
- full publicity of the panel's decision and order, to serve the principles of both specific and general deterrence.

Submissions on Behalf of the Member

Mr. Grant characterized his two past convictions as, in the one case, not replying to a letter he never received, and, in the second case, a battle which he unsuccessfully and, in retrospect, unwisely waged with another chartered accountant. He described all the charges in the past two cases and the present case as minor in nature.

Mr. Grant took issue with the statements made by Mr. Farley that he had not been rehabilitated and did not maintain the appropriate standards. He maintained that he had been rehabilitated and did maintain the proper standards, and filed as confirmation of this the latest financial statements he had prepared for the entity whose inadequately prepared financial statements led to one of the charges against the member in 1991.

At different times in his submissions Mr. Grant made statements such as:

- 'I do my best, yes I make mistakes, so does everyone else.'
- 'The deficiencies are not earth shattering, in fact they are not misconduct.'

Both statements disclose a refusal to understand or accept the findings of this panel of the discipline committee. He made other statements to the same effect, including:

- 'Mr. Farley had misrepresented his (*ie. Mr. Grant's*) letter of December 1996 in saying that the member had acknowledged he had made a mistake and not kept current.'
- 'He did understand the importance of compliance.'
- 'He was having trouble accepting the bank loan issue as decided by the discipline committee.'
- 'He did understand the concerns, he understands everyone's concerns.'

It was not apparent that this member appreciated that it was his failures which brought about the charges against him.

Mr. Grant filed as an exhibit an outline of the order which he sought, which was directed entirely at the professional conduct committee, including an order for costs against the professional conduct committee which he later suggested be set at \$2,000. He had this proposal framed and stated that he intended to present it to Mr. Farley. Mr. Grant also wanted to enter as an exhibit a job application to become a professional conduct committee investigator, but this was not allowed. Mr. Grant said that he was not on a soapbox, but alluded that 'these people had to be taught a lesson', and that this was a case of 'David vs. Goliath'. He contended that, as he had been found not guilty of 72% of the particulars under the charges, this was therefore not so much a case of his making mistakes as his having to do battle with the Institute, which rejected ideas not generated within its walls, and which did not recognize sole practitioners.

When asked if he wished to specifically address the terms of the suggested sanction made by the professional conduct committee, Mr. Grant said:

- a fine was not needed;
- supervision & public protection were typical overkill;
- reinvestigation was fine with him; and
- he loved learning and agreed to take some of the suggested courses.

In reply, Mr. Farley pointed out that the discipline committee did not have jurisdiction to order costs, and that the professional conduct committee had not sought costs against Mr. Grant. He also submitted that Mr. Grant's comments were informative in showing that he still did not understand that he had not complied with the prescribed standards of practice.

In response to the accusation that he had misconstrued the member's December 1996 letter, Mr. Farley read part of it into the record, and pointed out that the rule which Mr. Grant acknowledged in his letter he had not been aware of had been in place for nine years. Mr. Farley also submitted that, while the member contends he does his best, the professional conduct committee came to the view that he can do better, otherwise it would have sought a different sanction, and not one designed primarily for rehabilitation.

In rebuttal, Mr. Grant addressed the issue of the bank loan presentation in one of the charges, and said his intention was to take the 'difference of opinion' up with a CA to get a third party's view. When asked if he thought it was helpful to tell this committee that he was going to have another CA give an opinion on whether the decision of the discipline committee was correct, Mr. Grant explained that he did not mean any disrespect to the committee.

Deliberations and Further Submissions on the Issue of Expulsion

After deliberating initially, the parties were asked to reattend, as the panel wished both parties to make further submissions. The chair expressed the concerns of the panel as follows:

- (a) The panel viewed the breaches of the rules under charges Nos. 4 and 5 to be serious. The objectivity requirement is a basic requirement of the profession. It could not be said that failure to know about it or failure to apply it was a minor matter.
- (b) The panel thought there was reason to doubt that Mr. Grant could be rehabilitated. It appeared that he was unwilling, and possibly unable, to be governed by the Institute.
- (c) In these circumstances, it was not apparent to the panel why expulsion should not be considered an appropriate sanction in this case.

The panel heard further submissions from both parties.

Mr. Farley acknowledged that Mr. Grant had been charged because the professional conduct committee had concluded that he had not been rehabilitated, and would not otherwise recognize his need to be rehabilitated, but would continue to take the position that he had really done nothing wrong, and that the Institute should not expect a sole practitioner to be perfect. In such circumstances, Mr. Farley submitted, the professional conduct committee had to do something more than admonish the member, and so he had been charged.

Mr. Farley indicated that it had been the objectivity issue which had started the investigation process in the first place, and that, with respect to that issue, Mr. Grant's response had been:

- 'Sorry, but I did not know'; and
- 'I do know now and have fixed it – see the Notice to Reader financial statements enclosed.'

However, in the financial statements which Mr. Grant enclosed he did not disclose the relationship giving rise to the objectivity problem. In those circumstances, Mr. Farley stated, the professional conduct committee concluded that Mr. Grant did not know a basic principle of practice.

Mr. Farley submitted that expulsion at this time was not required or appropriate because the professional conduct committee had decided that Mr. Grant could be rehabilitated. He further submitted that if this turns out not to be possible, and if the same deficiencies are found upon the proposed future professional conduct committee reinvestigation, the member would likely be re-charged, found guilty, and expelled at that time.

Mr. Farley emphasized that the misconduct in this case did not constitute moral turpitude, and that the professional conduct committee did not think the member had been shown to be beyond rehabilitation. He also indicated that there had been some evidence of rehabilitation between the time of the discipline committee's 1991 Order and the subsequent reinvestigation conducted pursuant to that Order.

Mr. Grant said that he had taken this process seriously, took his designation seriously, and wanted the chance to prove that he could be as good a chartered accountant as anyone in the room.

Further Deliberations and Panel Concerns

There were two other aspects of this case which caused particular difficulty for the panel in deciding on the appropriate sanctions. One problem related to Mr. Grant's ability or willingness to attain and maintain the appropriate standard of practice. The other problem was the quality of the investigation, and the information made available to Mr. Grant during the investigation.

Questions about Rehabilitation

Mr. Grant had given the panel little, if any, reason to conclude that he recognized that his standards of practice were not adequate, or that he would make an effort to understand and apply the standards of the profession. His actions, including his testimony at the hearing, did not give an indication of a serious effort on his part to attain and maintain competence in the areas in which he practises.

Mr. Grant's application for an adjournment for the purposes of establishing a possible technical defence evidenced the fact that he did not understand the objectivity requirement even at this hearing. Despite having had two months from the date of the assignment hearing to prepare for the hearing, and then four additional weeks between the conclusion of the case for the professional conduct committee and the start of his case, the member failed to demonstrate any understanding of a basic principle, even though it was the subject of two of the charges he faced. As a result, it was impossible not to be skeptical about Mr. Grant's willingness or ability to be rehabilitated, and, indeed, his willingness or ability to be governed by the Institute.

Questions about the Investigation

The investigation undertaken in this case did not appear to meet the typical high standards of the professional conduct committee, or the high standard demonstrated by this particular investigator in past cases. The investigator could not say when he had met with Mr. Grant, or how long he had met with him, and did not have notes of their meeting. This panel knows full well that Mr. Grant can be exasperating, because it is very difficult to know whether he understands or is focused on the points in issue. However, this fact cannot be allowed to undermine the conduct of a thorough, professional investigation.

Apparently, when Mr. Grant appeared before the professional conduct committee, he did not have the report of the investigator, and only received that report a day or two before the assignment hearing. According to Mr. Grant, when he appeared before the professional conduct committee, he thought it was only to answer questions about objectivity, being the subject of the complaint, and of his letter of December 1996.

The panel was surprised to hear uncontradicted evidence that the member did not know that the professional conduct committee had concerns beyond the issue of objectivity. We think that was unfair to the member, and may have resulted in particulars being alleged, or charges being laid, which would not have been alleged or laid had the member known what was in issue. This panel of the discipline committee thinks a member appearing before the professional conduct committee on standards issues is entitled to have prior notification of the issues and concerns of the professional conduct committee.

Mr. Grant asked us to direct that members attending before the professional conduct committee be given a copy of the investigator's report. There may be reasons why a member under investigation should not have the investigator's report, and we do not think it is our role to settle such questions of policy in the context of a single hearing, particularly when counsel for the professional conduct committee did not address the issue. We think it sufficient to say that we believe a member should know the issues and concerns of the professional conduct committee, including the issues which arise from the report of its investigator, when the member appears before that committee.

The Order

The flaws in the investigation do not establish that the professional conduct committee was engaged in a witch hunt, as Mr. Grant asserted. He was before the professional conduct committee, and before this committee, because there was evidence that he had failed in a substantial way to maintain the standards of the profession. He did not recognize this before he was found guilty, and it was not entirely clear that he understood it after the finding. A majority of the committee was persuaded by the further submissions of the parties that an order of expulsion at this time would not be appropriate.

While acknowledging that all three general principles of sentencing, namely rehabilitation, general deterrence and specific deterrence, were relevant in this case, the panel concluded, upon deliberation, that rehabilitation and specific deterrence were the priorities. The panel made the following order:

1. THAT Mr. Grant be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Grant be and he is hereby fined the sum of \$4,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Grant be and he is hereby required to complete, by attending in their entirety, within eighteen (18) months from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute:
 1. Accounting, Auditing and Professional Practice Update;
 2. Accounting Refresher;
 3. Financial Statement Presentation and Disclosure;
 4. Audit of a Small Business; and
 5. Review and Compilation Engagements,

or, in the event a course listed above becomes unavailable, the successor course which takes its place.

4. THAT Mr. Grant be and he is hereby required to complete a period of supervised practice upon the following terms and conditions:
 - (a) the term of the supervised practice shall be two (2) years from the date this Decision and Order becomes final under the bylaws;
 - (b) the cost of the supervised practice shall be borne by Mr. Grant;
 - (c) the supervisor shall report to the professional conduct committee every six (6) months;
 - (d) Mr. Grant shall nominate the supervisor subject to professional conduct committee approval;
 - (e) the supervisor shall be actively involved in the practice of public accounting, and have received a satisfactory practice inspection report within four (4) years immediately preceding the date this Decision and Order becomes final under the bylaws;
 - (f) the supervisor shall review all files pertaining to audit, review and compilation engagements, and shall evidence such review by signing the working papers prior to release of the financial statements; and
 - (g) in the event the professional conduct committee finds Mr. Grant's choice of supervisor unacceptable, or there is any other issue relating to supervised practice about which Mr. Grant and the professional conduct committee cannot agree, either may apply to the chair of the panel or to the chair of the discipline committee at an assignment hearing for directions.
5. THAT Mr. Grant be reinvestigated by the professional conduct committee, or by a person retained by the professional conduct committee, on one occasion, during the last six (6) months of the supervised practice period, the costs of the reinvestigation, up to \$2,000, to be paid by Mr. Grant within thirty (30) days of receiving notification of the cost of the reinvestigation.
6. THAT notice of this Decision and Order, disclosing Mr. Grant'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*.
7. THAT in the event Mr. Grant fails to comply with any of the requirements 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 6 hereof, and by publication in *The Globe and Mail*.

Reprimand

The panel was 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 panel concurred with counsel for the professional conduct committee that a fine was important as both a general and a specific deterrent. Mr. Grant thought that a fine should not be levied due to the costs that he had incurred in these proceedings. After consideration of the other costs to Mr. Grant resulting from its Order, the panel felt that a fine in the amount of \$4,000 was appropriate in this case.

Professional Development Courses

The discipline committee agrees with the professional conduct committee that one of the purposes of the discipline process, in appropriate cases, is to encourage rehabilitation. The panel felt that the courses ordered would help Mr. Grant update his skills and assist in his rehabilitation.

Supervised Practice

The panel ordered that the professional development courses be completed within 18 months from the date of its Decision and Order becoming final under the bylaws. Since it appears Mr. Grant will continue to practise during this time, the panel agreed with the professional conduct committee that there ought to be a period of supervised practice. The panel felt compelled to ensure that the public receives services that meet professional standards.

Reinvestigation

In order to ensure that the public will in the future receive services that meet professional standards, the panel ordered a reinvestigation of Mr. Grant's practice after he has completed the professional development courses, but before the term of his supervised practice expires, namely, between 18 and 24 months after its Decision and Order becomes final under the bylaws.

Possible Expulsion

This Order, as in the case of all orders of the discipline committee, provides for expulsion in the event the member does not comply with its terms. As will be apparent from the dissent below, there was considerable skepticism that Mr. Grant would or could rehabilitate himself, or would or could be governed by the Institute. Accordingly, we concluded that in the event Mr. Grant fails to comply with any of the provisions of this Order he shall thereupon be immediately expelled from the Institute.

Notice

Notification, including publication, of the Decision and Order, including Mr. Grant's name, is, in the opinion of the panel, a general deterrent. The disciplinary process of a self-governing professional body must be viewed by its member and the public as an open process.

A Final Word

In large part, Mr. Grant, who was critical of Mr. Farley, owes his continued membership to the distinctions Mr. Farley made between this case and a recent past case, and to his submissions about Mr. Grant's past attempt at rehabilitation following the 1991 order of the discipline committee. Mr. Grant should harbour no illusions about the almost certain result of a future appearance before the discipline committee, or about what his fate would likely have been this time had the professional conduct committee prosecutor contended that he was ungovernable or beyond rehabilitation.

A DISSENT

One member of the panel, Mr. Porter, voted to expel Mr. Grant. He was of the view that this panel of the discipline committee was in a better position to conclude whether or not Mr. Grant was governable or capable of rehabilitation than the professional conduct committee, as this hearing had lasted five days, which was considerably longer than Mr. Grant's attendance before the professional conduct committee. Mr. Porter thought the best indication of what Mr. Grant was capable of was disclosed by his conduct, including his conduct at the hearing, not by what the professional conduct committee concluded he would do. Two members of the panel, Mr. Clarkson and the chair, were inclined to agree with Mr. Porter, but ultimately concluded that Mr. Grant should be given one more chance to rehabilitate himself and prove that he can be governed by the Institute.

DATED AT TORONTO THIS 25TH DAY OF JANUARY, 1999
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

P.B.A. CLARKSON, CA

D.W. DAFOE, FCA

G.A. PORTER, CA (dissenting)

N.C. AGARWAL (Public representative)