

Jay Jerome Granatstein: Summary, as Published in *CheckMark*

Jay Jerome Granatstein, of Toronto, was found guilty by the discipline committee of two charges of professional misconduct, laid by the professional conduct committee, namely

- one charge, under Rule of Professional Conduct 202, of failing to perform his professional services with due care; and
- one charge, under Rule of Professional Conduct 205, of signing or associating himself with a letter which he knew or should have known was false or misleading.

The discipline committee ordered that Mr. Granatstein

- be reprimanded in writing by the chair of the hearing; and
- assessed costs of \$6,600, to be paid within a specified time.

The discipline committee further ordered that notice of its decision and order not disclose Mr. Granatstein's name.

The professional conduct committee appealed the term of the discipline committee's order with respect to the non-disclosure of the member's name. The appeal committee granted the appeal and varied the discipline committee's order to include disclosure of Mr. Granatstein's name in notice of its decision and order.

Failure to comply with the second term of the order as set out above would have resulted in Mr. Granatstein's suspension from membership. Continuation of the suspension for more than thirty days without complying with the said term would have resulted in his expulsion from membership.

Mr. Granatstein has complied with the order and has remained a MEMBER IN GOOD STANDING.

CHARGE(S) LAID re Jay Jerome Granatstein

The Professional Conduct Committee hereby makes the following charges against Jay J. Granatstein, CA, a member of the Institute:

1. THAT, the said Jay J. Granatstein, CA, on or about the 22nd day of October 1987, signed or associated himself with a letter dated October 22, 1987 and addressed to Mr. W. Brian Grey, which he knew or should have known was false or misleading contrary to Rule 205(1) of the Rules of Professional Conduct.
2. THAT, the said Jay J. Granatstein, CA, on or about the 22nd day of October 1987, failed to perform his professional services with due care in that he signed or associated himself with a letter dated October 22, 1987 addressed to Mr. W. Brian Grey, without having carried out sufficient inquiry and review to support the representations contained in the letter, contrary to Rule 202 of the Rules of Professional Conduct.
3. ~~THAT, the said Jay J. Granatstein, CA, on or about the 22nd day of October 1987, signed or associated himself with a letter dated October 22nd, 1987 and addressed to Mr. Doug Bain, which he knew or should have known was false or misleading contrary to Rule 205(1) of the Rules of Professional conduct.~~ **(WITHDRAWN BY THE PCC BWS)**
4. ~~THAT, the said Jay J. Granatstein, CA, on or about the 22nd day of October 1987, failed to perform his professional services with due care in that he signed or associated himself with a letter dated October 22nd, 1987 addressed to Mr. Doug Bain, without having carried out sufficient inquiry and review to support the representations contained in the letter, contrary to rule 202 of the Rules of Professional Conduct.~~ **(WITHDRAWN BY THE PCC BWS)**

DATED at Toronto this 10th day of May 1990.

R.G. LONG, C.A. - CHAIRMAN
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Jay Jerome Granatstein

DECISION AND ORDER IN THE MATTER OF: Charges against Jay Jerome Granatstein, CA, a member of the Institute, under Rules 202 and 205 of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE OCTOBER 11, 1990

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 and 2, charges Nos. 3 and 4 having been withdrawn, THE DISCIPLINE COMMITTEE FINDS Jay Jerome Granatstein guilty of charges Nos. 1 and 2.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Granatstein be reprimanded in writing by the chairman of the hearing.
2. THAT Mr. Granatstein be and he is hereby charged costs of \$6,600 to be remitted to the Institute within sixty (60) days from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and order, without disclosing Mr. Granatstein's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckKark*:
 - (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. Granatstein 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. Granatstein is suspended pursuant to paragraph 4 hereof, the suspension shall terminate upon compliance with the term of the Order in respect of which he was suspended, provided that he complies within thirty (30) days from the date of his suspension.
6. THAT in the event Mr. Granatstein fails to terminate suspension within thirty (30) days, 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 15TH DAY OF OCTOBER, 1990
BY ORDER OF THE DISCIPLINE COMMITTEE

B . W. STEPHENSON - SECRETARY
THE DISCIPLINE COMMITTEE

DISCIPLINE COMMITTEE re Jay Jerome Granatstein

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

WRITTEN REASONS FOR THE DECISION AND ORDER MADE OCTOBER 11 1990

These proceedings before the discipline committee of the Institute of Chartered Accountants of Ontario were heard on October 11, 1990.

Mr. Paul Farley attended on behalf of the professional conduct committee and Mr. Jay J. Granatstein attended with, and was represented by, his counsel, Mr. William Herridge.

Mr. Farley advised that the professional conduct committee was withdrawing charges Nos. 3 and 4. Mr. Granatstein then entered pleas of guilty to charges Nos. 1 and 2, laid under Rules of Professional Conduct 205 and 202, respectively.

The chairman confirmed that the member and his counsel both understood that on a plea of guilty, and on that basis alone, the member could be found guilty by the committee.

An agreed statement of facts, signed by the member and by counsel for the professional conduct committee, and a document brief were filed as exhibits. In the agreed statement of facts, the member agreed that he should have known that the letter to a Mr. Grey, dated October 22, 1987, was false and misleading. The member also agreed that on this occasion he failed to perform his professional services with due care in signing or associating himself with the letter dated October 22, 1987, addressed to Mr. Grey.

Based upon the evidence, including the member's pleas of guilty and the agreed statement of facts, the committee found Mr. Granatstein guilty of charges Nos. 1 and 2.

The committee then heard evidence and submissions from both the prosecution and the defence with respect to appropriate sanctions and, after deliberation, made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Granatstein be reprimanded in writing by the chairman of the hearing.
2. THAT Mr. Granatstein be and he is hereby charged costs of \$6,600 to be remitted to the Institute within sixty (60) days from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and order, without disclosing Mr. Granatstein's name, be given after this Decision and order becomes final under the bylaws:

(a) by publication in *CheckKark*:

- (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. Granatstein 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. Granatstein is suspended pursuant to paragraph 4 hereof, the suspension shall terminate upon compliance with the term of the order in respect of which he was suspended, provided that he complies within thirty (30) days from the date of his suspension.
6. THAT in the event Mr. Granatstein fails to terminate suspension within thirty (30) days, 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.

Both counsel were in agreement with the sanctions relating to the written reprimand by the chairman of the hearing and the charging of costs in the amount of \$6,600. The committee is of the view that a reprimand is necessary as a deterrent to the member charged and to stress the unacceptability of his conduct as a chartered accountant. The committee agrees that the imposition of costs in the amount of \$6,600 is appropriate in this case.

On the questions of notice of the committee's decision and order and disclosure of the member's name, the committee decided on the giving of notice without disclosure of the member's name, despite strenuous opposing arguments by counsel for the professional conduct committee. The committee's reasons for this decision are as set out below.

Clause 16 of the agreed statement of facts states "that there was no intent to breach the rules of the Institute... and that there was no moral turpitude on the part of Granatstein".

The committee carefully considered the past cases of the Institute's discipline and appeal tribunals provided to it by both counsel, relating to the issue of non-disclosure of a member's name, as well as their respective submissions on the point. In addition, the committee sought, and received, from its counsel the following advice on the question:

- that in exercising its discretion to impose an appropriate sanction under the bylaws, the discipline committee should not act in a vacuum, i.e. without reference to the principles that have been applied in earlier cases. This is especially so with respect to principles which have been laid down by an appeal committee
- that a major reason for making reference to earlier cases is to ensure that the standards for assessing the appropriate sanction are applied consistently;
- that there is no magic in such words used in previous cases as "rare and unusual" or "exceptional", such that the committee must find that the facts here fit within either of these rubrics before it can dispense with disclosure of the member's name, as provided in Bylaw 83. In other words, the committee must still determine, on the particular facts of this case,

whether or not the giving of notice of this decision and order is appropriate and, if it is, whether or not the giving of such notice without disclosing the member's name is appropriate;

- that if the above analysis is performed, there is little doubt that, in most cases, notice including disclosure of the member's name will be the result.

Counsel for the professional conduct committee and the member confirmed that they generally agreed with the above four points.

Counsel for the professional conduct committee in his opening remarks indicated that this was not a situation which required severe sanctions and, accordingly, the professional conduct committee did not request severe sanctions.

The members of the panel were of the view that, in light of the limited information presented to it in the agreed statement of facts and the document brief, as well as the relative lack of severity of the charges, it was appropriate to order that notice of the decision and order not disclose the member's name.

With respect to the issue of disclosure of name, two members of the discipline committee disagreed with the majority in the decision to withhold the member's name. The dissenting members noted that

Mr. Granatstein pleaded guilty and was found guilty of both charges of professional misconduct. On that basis alone, under the circumstances of the case, both members were of the view that such breaches of the rules warranted disclosure of Mr. Granatstein's name in the notice of the decision and order.

DATED AT TORONTO, THIS 13th DAY OF DECEMBER, 1990.
BY ORDER OF THE DISCIPLINE COMMITTEE

E.W. SLAVENS, FCA – CHAIRMAN
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

E.W. SLAVENS, FCA (Panel Chairman) - dissenting
G.W. CLARKSON, FCA
P.J. FITZPATRICK, CA - dissenting
W.A. MOORHEAD, FCA
J.B. SCOTT, CA
A. CRANSTON (Public Representative)

APPEAL COMMITTEE re Jay Jerome Granatstein

IN THE MATTER OF: An appeal lodged by the professional conduct committee, against the decision and order of the discipline committee made on October 11, 1990, regarding Mr. Jay J. Granatstein, CA, a member of the Institute, pursuant to The Chartered Accountants Act and the Bylaws pursuant the Act.

DECISION

This appeal came before a panel of the appeal committee on March 20, 1991. The appellant, the professional conduct committee, was represented by Mr. P.F. Farley. The respondent, Mr. J.J. Granatstein, CA, was represented by Mr. W.R. Herridge.

The appeal was limited to the issue of sanction and the relief sought was that the order pertaining to publication be varied so as to include full disclosure of Mr. Granatstein's name along with the notice of the decision and order as specified. No other parts of the discipline committee's order were at issue.

After reviewing the decision and reasons for decision of the discipline committee and after hearing the submissions of counsel and reviewing the evidence that was before the discipline committee, the appeal committee granted the appeal in its entirety.

All parties were informed of the appeal committee's decision and were advised that written reasons for it's decision would follow. These are the reasons of the appeal committee's decision.

REASONS FOR DECISION

The discretionary power given to the appeal and discipline committees to withhold the publication of the name of a person disciplined comes from Bylaw 83(4). Bylaw 83(4) states:

83(4) Notice given under this bylaw shall disclose the name of the person disciplined unless the discipline committee or the appeal committee, as the case may be, otherwise orders.

There is no doubt in our minds that the discipline committee has the discretionary power to consider whether or not a member's name should be published. We are in agreement with the advice given to the discipline committee by its counsel at the hearing, and articulated in the reasons of the discipline committee, which states

- that in exercising its discretion to impose an appropriate sanction under the bylaws, the discipline committee should not act in a vacuum, i.e. without reference to the principles that have been applied in earlier cases. This is especially so with respect to principles which have been laid down by an appeal committee;
 - that a major reason for making reference to earlier cases is to ensure that the standards for assessing the appropriate sanction are applied consistently;

- that there is no magic in such words used in previous cases as "rare and unusual" or "exceptional" such that the committee must find that the facts here fit within either of these rubrics before it can dispense with disclosure of the member's name, as provided in Bylaw 83. In other words, the committee must still determine, on the particular facts of this case, whether or not the giving of notice of this decision and order is appropriate and, if it is, whether or not the giving of such notice without disclosing the member's name is appropriate;
- that if the above analysis is performed, there is little doubt that, in most cases, notice including disclosure of the member's name will be the result."

In our deliberations we were guided by the decision of "R. vs. Basha" (1980), 61 A-P.R., 23 Nfld. & PEI R. 286 at p. 299, which was presented in the respondent's factum:

... 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.

Clearly, a sentence should be altered only if the court or tribunal imposing the sentence acted on a wrong principle.

In reviewing the case law that was before the discipline committee, we find ample guidance with respect to the principle of sentencing with respect to publication.

In the discipline committee's decision regarding Gordon Hardcastle we find the principle of sentencing with respect to publicity is addressed as follows:

As to the issue of publicity, the discipline committee embraces the widelyheld view that the publishing of the names of members found guilty of professional misconduct is, in the majority of cases, the single most significant penalty that can be administered that addresses both the individual issues of specific deterrence and rehabilitation and the wider needs of general deterrence and education of the membership at large. Only in the most exceptional of circumstances does this committee consider it appropriate that it be asked to dispense with the publishing of the name of a guilty member...

The principle of sentencing with respect to publicity enunciated in the Hardcastle decision is repeated in the appeal committee's decision in the Finkelman and Solmon case, as follows:

The appeal committee wishes to make a general comment about Bylaw 83(4). We recognize that as long as the Bylaw provides that the discipline committee or the appeal committee may "otherwise order" some member being disciplined will argue that in the particular circumstances of their case such an order should be made and publication of their name withheld. In light of the principle of general deterrence and the importance of confidence in the openness of the Institute's disciplinary process, this committee is of the view that circumstances which could

persuade an appeal committee or the discipline committee not to publish a disciplined member's name will be rare and unusual.

In both the Hardcastle and Finkelman and Sohnon cases we are guided by the principle that, in sentencing, only in rare and unusual circumstances will the name of a member found guilty of professional misconduct be withheld from publication.

Having established this principle of sentencing we then turn to the decision of the discipline committee with respect to Mr. Granatstein.

We are of the view that Rule 205 goes to the heart of the standards of conduct affecting the public interest. While one can never predetermine with absolute certainty, it is difficult for this committee to conceive of any circumstances where a finding of guilt under Rule 205 would warrant the exercise of a discretion to not publish a member's name under Bylaw 83(4).

The identification of rare and unusual circumstances warranting the withholding of publication of the member's name was the task that was before the discipline committee in the Granatstein case and the task that must be faced by future discipline and appeal committee's in deciding whether or not to exercise a discretion pursuant to Bylaw 83(4). On the face of the reasons of the majority of the discipline committee it appears that their decision to withhold the member's name from publication was based on their findings that there was limited information presented to it as well as the relative lack of severity of the charges. The reasons are silent with respect to any other mitigating factors which were considered relevant by the discipline committee and we can only assume that they were not worthy of mention since they were not published. With all due respect to the discipline committee, its decision demonstrates a misunderstanding of the principles of sentencing that have been articulated in past decisions of the appeal and discipline committees. We accept the argument of Mr. Farley and disagree with the conclusion of the discipline committee that any limits on the information presented to it justified a decision to withhold the member's name from publication. In addition the discipline committee erred in considering that a finding of guilt under Rule 205 reflected a "lack of severity". As already mentioned, a breach of Rule 205 goes to the heart of the standards of conduct affecting the public interest.

We find that the discipline committee erred, not in its finding of fact but in its application of the principle as to sentencing. Guided by the approach articulated in the "R. vs. Basha" case we are satisfied that it is this committee's proper role to correct a failure on the part of the discipline committee to apply properly the principles of sentencing regarding the publishing of a member's name. The facts as found by the discipline committee in this case do not support a case for withholding the members name from publication. For all the above reasons this appeal is upheld and the decision and order of the discipline committee will be varied to include the full disclosure of the members name along with the notice of the decision and order.

SIGNED AND DATED THIS 15TH DAY OF APRIL 1991.

R.G. McNEILL, FCA - CHAIR

APPEAL COMMITTEE re Jay Jerome Granatstein

ORDER OF THE APPEAL COMMITTEE IN THE MATTER OF: An appeal lodged by the professional conduct committee, against the decision and order of the discipline committee made on October 11, 1990, regarding Mr. Jay J. Granatstein, CA, a member of the Institute, pursuant to *The Chartered Accountants Act* and the Bylaws pursuant the Act.

ORDER

This appeal came before a panel of the appeal committee on March 20, 1991. The appellant, the professional conduct committee, was represented by Mr. P.F. Farley. The respondent, Mr. J.J. Granatstein, CA, was represented by Mr. W.R. Herridge.

The appeal was limited to the issue of sanction and the relief sought was that the order of the discipline committee pertaining to publication be varied so as to include full disclosure of Mr. Granatstein's name along with the notice of the decision and order as specified. No other parts of the discipline committee's order were at issue.

After reviewing the decision and reasons for decision of the discipline committee and after hearing the submissions of counsel and reviewing the evidence that was before the discipline committee, the appeal committee orders that the appeal be granted in its entirety. Both parties were informed of the appeal committee's decision and advised that written reasons would follow.

SIGNED AT TORONTO THIS 9TH DAY OF APRIL 1991.

P.G. SCHOFIELD – SECRETARY
APPEAL COMMITTEE