

## **John Alvin Baker: Summary, as Published in *CheckMark***

**John Alvin Baker**, of Guelph, was found guilty by the discipline committee of a charge of professional misconduct, laid by the professional conduct committee, under Rule of Professional Conduct 104, of failing to reply promptly to a letter from the Institute.

Mr. Baker appealed the discipline committee's finding and order to the Council-Appeal committee. The Council-Appeal committee confirmed the finding of professional misconduct and order of the discipline committee and ordered Mr. Baker to pay the costs of the appeal.

The orders provided that Mr. Baker

- Be reprimanded in writing by the chairman of the discipline committee hearing; and
- Be fined \$350 and assessed costs of \$2,500 (inclusive of both the discipline and appeal hearings), all to be paid within specified times.

Failure to comply with the latter term of the order would have resulted in Mr. Baker's suspension from membership. Continued non-compliance for a period of six months would have resulted in Mr. Baker's expulsion from membership.

## **CHARGE(S) LAID re John Alvin Baker**

The Professional Conduct Committee hereby makes the following charge against John A. Baker, a suspended member of the Institute:

1. THAT, the said John A. Baker, failed to promptly reply in writing to a letter from the Institute, in respect of a matter of professional conduct, signed by the assistant director of ethics, dated and sent March 30, 1987, in which a reply was specifically requested, contrary to Rule 104 of the Rules of Professional Conduct, approved June 15, 1981.

DATED at Toronto this 9<sup>th</sup> day of July, 1987

R.T. NEVILLE, FCA – DEPUTY CHAIRMAN  
PROFESSIONAL CONDUCT COMMITTEE

## **DISCIPLINE COMMITTEE re John Alvin Baker**

**FINDING AND ORDER IN THE MATTER OF:** A charge against JOHN ALVIN BARER, CA, a member of the Institute, under Rule 104 of the Rules of Professional Conduct, approved June 15, 1981.

### **FINDING AND ORDER MADE FEBRUARY 11, 1988.**

#### FINDING

THAT the discipline committee, having seen, heard and considered the evidence and submissions for both the professional conduct committee and the member charged, finds John Alvin Baker guilty of the charge.

#### ORDER

IT IS ORDERED in respect of the charge:

1. That Mr. Baker be reprimanded in writing by the chairman of the hearing.
2. THAT Mr. Baker be and he is hereby fined the sum of \$350, to be remitted to the Institute within ten (10) days from the date this Finding and order becomes final under the bylaws.
3. THAT Mr. Baker be and he is hereby charged costs of \$1,300 to be remitted to the Institute as follows:
  - (a) \$650 within three (3) months from the date this Finding and order becomes final under the bylaws; and
  - (b) \$650 within six (6) months from the date this Finding and Order becomes final under the bylaws.
4. THAT notice of the Finding herein and this order, disclosing Mr. Baker's name, be given after this Finding and Order becomes final under the bylaws:
  - (a) by publication in Check Mark;
  - (b) to the Public Accountants Council for the Province of Ontario; and
  - (c) to the Canadian Institute of Chartered Accountants.
5. THAT in the event Mr. Baker fails to comply with the requirements of paragraph 2 of this Order, he is thereupon, upon such failure to comply, suspended from the rights and privileges of membership in the Institute. Notice of his suspension, disclosing his name, is to be given in the manner specified above.
6. THAT in the event Mr. Baker is suspended pursuant to paragraph 4 of this Order, the suspension shall terminate upon compliance with the terms of the order, provided that he complies within six (6) months from the date of his suspension. In the event he

remains suspended for six (6) months, he shall, upon the expiry of the six (6) months, be expelled from membership in the Institute and notice of his expulsion, disclosing his name, shall be given in the manner specified above.

DATED AT TORONTO, THIS 25TH DAY OF MARCH, 1988  
BY ORDER OF THE DISCIPLINE COMMITTEE

B.W. STEPHENSON - SECRETARY  
THE DISCIPLINE COMMITTEE

## **DISCIPLINE COMMITTEE re John Alvin Baker**

**REASONS FOR THE FINDING AND ORDER IN THE MATTER OF:** A charge against JOHN ALVIN BAKER, CA, a member of the Institute, under Rule 104 of the Rules of Professional Conduct, approved June 15, 1981.

### **WRITTEN REASONS FOR THE FINDING AND ORDER MADE FEBRUARY 11, 1988.**

This hearing was convened before the discipline committee of the Institute of Chartered Accountants of Ontario on February 11, 1988, to hear one charge laid by the professional conduct committee against John Alvin Baker, under Rule of Professional. Conduct 104.

Mr. Paul Farley attended on behalf of the professional conduct committee and Mr. Baker attended on his own behalf. The chairman of the hearing read out the charge, to which Mr. Baker pleaded not guilty.

At the beginning of the case for the professional conduct committee, an Exhibit Book was introduced by Mr. Farley and, with the consent of Mr. Baker, was filed as an exhibit in the hearing.

After hearing all of the evidence presented and submissions made by counsel for the professional conduct committee and by the member charged, the discipline committee, after deliberation, found Mr. Baker guilty of the charge. The committee advised both parties of its finding of guilty and then heard submissions from them as to appropriate sanction. After further deliberation, the committee made its order as to sanctions and advised both parties of it.

The Finding and Order is as follows:

#### **FINDING**

THAT the discipline committee, having seen, heard and considered the evidence and submissions for both the professional conduct committee and the member charged, finds John Alvin Baker guilty of the charge.

#### **ORDER**

IT IS ORDERED in respect of the charge:

1. That Mr. Baker be reprimanded in writing by the chairman of the hearing.
2. THAT Mr. Baker be and he is hereby fined the sum of \$350, to be remitted to the Institute within ten (10) days from the date this Finding and order becomes final under the bylaws.
3. THAT Mr. Baker be and he is hereby charged costs of \$1,300 to be remitted to the Institute as follows:

- (a) \$650 within three (3) months from the date this Finding and Order becomes final under the bylaws; and
  - (b) \$650 within six (6) months from the date this Finding and order becomes final under the bylaws.
- 4. THAT notice of the Finding herein and this Order, disclosing Mr. Baker's name, be given after this Finding and order becomes final under the bylaws:
  - (a) by publication in Check Mark;
  - (b) to the Public Accountants Council for the Province of Ontario; and
  - (C) to the Canadian Institute of Chartered Accountants.
- 5. THAT in the event Mr. Baker fails to comply with the requirements of paragraph 2 of this Order, he is thereupon, upon such failure to comply, suspended from the rights and privileges of membership in the Institute. Notice of his suspension, disclosing his name, is to be given in the manner specified above.
- 6. THAT in the event Mr. Baker is suspended pursuant to paragraph 4 of this order, the suspension shall terminate upon compliance with the terms of the Order, provided that he complies within six (6) months from the date of his suspension. In the event he remains suspended for six (6) months, he shall, upon the expiry of the six (6) months, be expelled from membership in the Institute and notice of his expulsion, disclosing his name, shall be given in the manner specified above.

We now set out our reasons for this Finding and Order.

### Finding

The charge upon which Mr. Baker was found guilty alleged that he failed to promptly reply in writing to a letter from the Institute, dated and sent March 30, 1987, concerning a matter of professional conduct, contrary to Rule 104.

A letter dated June 23, 1987, addressed to the Institute and signed by Mr. Baker, purportedly in response to the Institute's March 30 letter, was filed at the hearing as part of the Exhibit Book. Mr. Baker's evidence was that his letter was sent to the Institute on or about June 23, 1987, while the evidence on behalf of the professional conduct committee was that it was never received. A copy of the letter, however, was forwarded by Mr. Baker with a letter of September 27, 1987, and was received at the Institute on September 29, 1987.

There was no evidence led as to what may have become of Mr. Baker's June 23 letter, but the committee does not consider this to be an issue, in any event, in the circumstances of this case. The committee is of the view that, in response to a letter dated March 30, from the Institute, concerning a matter of professional conduct and demanding a written reply within 20 days, a letter dated and sent June 23 should not be considered a prompt reply, as contemplated by Rule of Professional Conduct 104. Accordingly, the committee finds Mr. Baker guilty of the charge laid.

### Order

In deliberating as to appropriate sanction, the committee took into consideration the principles of general and specific deterrence, both of which are of importance in this case. The committee also considered and recognized the importance of Rule 104 to the proper functioning of the

discipline process of the Institute and wishes to make it very clear to Mr. Baker, and to the profession generally, that it considers a breach of this rule a serious offence which, in the interests of the public and of the profession, will be dealt with sternly by the committee. The Institute can function properly to meet the needs and fulfill the demands of its members only if the members do their part and cooperate with the Institute. If they refuse to do so, and come before the discipline committee as a result, they shall be dealt with accordingly.

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

## **COUNCIL-APPEAL COMMITTEE re John Alvin Baker**

**IN THE MATTER OF:** An appeal lodged by John A. Baker, CA, a member of the Institute, against the finding and order of the discipline committee made on February 11, 1988.

This panel of the Council-Appeal committee met on February 6, 1989 to hear the appeal of John A. Baker, CA. Although Mr. Baker was not present, an agent, Miss Lyn Aristikaitis (who is not a barrister or solicitor), attended for part of the proceeding on his behalf. Mr. Paul Farley attended as counsel for the professional conduct committee.

### **Order of December 8. 1988**

The panel had met previously on December 8, 1988 to hear an application filed on behalf of the professional conduct committee to have the appeal dismissed. Mr. Baker was not represented by counsel, nor had he obtained counsel when he appeared before the Council-Appeal committee on December 8, 1988. Mr. Baker requested an adjournment of the December 8, 1988 hearing to enable him to obtain counsel. That adjournment request was denied.

The application to have the appeal dismissed was heard in the presence of Mr. Farley, counsel for the professional conduct committee and the appellant, Mr. Baker. The motion was dismissed and the Council-Appeal committee ordered that Mr. Baker file a copy of the transcript of the discipline committee hearing of February 11, 1988 on or before Friday, January 20, 1989. It was further ordered that upon the filing of the transcript, the appeal would be heard on February 6, 1989.

In respect of the February 6, 1989 hearing, Mr. Baker was specifically advised that the Council-Appeal committee would not entertain an adjournment application made by him, to enable him to obtain legal counsel.

### **Application for Adjournment**

The first matter that the Council-Appeal committee dealt with at the February 6th, 1989 hearing was an application to adjourn made by Miss Lyn Aristikaitis, Mr. Baker's agent. Mr. Paul Farley attended as counsel for the professional conduct committee.

Miss Aristikaitis said that Mr. Baker had called her early that morning or late the night before and requested that she attend the hearing to ask for an adjournment because he had other "pressing matters" to attend to. Miss Aristikaitis was unable to provide further details concerning Mr. Baker's "pressing matters". His phone call apparently woke her up and she could not be certain when he called. A short recess was granted to allow Miss Aristikaitis to call Mr. Baker at his office. She was not successful in contacting him and his office could not say where he was. She did not know the history of the proceedings but submitted there had to have been a good reason for the adjournment request or Mr. Baker would not have called her.

Mr. Farley said that the professional conduct committee opposed the adjournment, given the numerous adjournments granted to Mr. Baker in the past and the absence, in this instance, of a reasonable cause or any reason for granting the adjournment. Mr. Farley also said that the many delays in dealing with Mr. Baker's case were prejudicing the disciplinary process.



After having heard the submissions from both parties and after having received advice from the committee's counsel as to matters of law, the Council-Appeal committee denied Mr. Baker's request for an adjournment and ordered that the appeal proceed to be heard, in his absence.

The committee invited Miss Lyn Aristikaitis to stay to either observe or take part in the proceedings, but she elected to withdraw.

#### Reasons with respect to the denial of the adjournment

The Council-Appeal committee was unable to assess or evaluate the reasonableness of the "pressing matters" alluded to by Miss Aristikaitis. Mr. Baker was familiar enough with the process to know that adjournments are granted only for clear and specific reasons and he also knew that the Council-Appeal committee had said in December that it wished to proceed to hear the appeal on its merits. The notice of hearing, dated November 18, 1988, clearly advised Mr. Baker that the Council-Appeal committee could proceed in his absence.

Council-Appeal then considered whether there would be any prejudice to Mr. Baker if it proceeded to hear the appeal in his absence. The committee noted that all of Mr. Baker's written evidence was before it and that there was no indication from Mr. Baker that new evidence was to be presented at the hearing. While Mr. Baker's absence would preclude him from making oral submissions, his notice of appeal set out the grounds for his appeal.

For all the above reasons, the Council-Appeal committee denied the adjournment request and ordered that the appeal proceed.

#### Finding with respect to the charge

The Council-Appeal committee reviewed the charge against Mr. Baker which reads

THAT, the said John A. Baker, failed to promptly reply in writing to a letter from the Institute, in respect of a matter of professional conduct, signed by the assistant director of ethics, dated and sent March 30, 1987, in which a reply was specifically requested, contrary to Rule 104 of the Rules of Professional Conduct, approved June 15, 1981.

The Council-Appeal reviewed the arguments outlined in Mr. Baker's notice of appeal dated May 20, 1988. There were basically three points to consider

- a) The substance of Mr. Baker's first argument was, that, given his telephone conversations and letter of January 8, 1987 (Exhibit 6), he had already responded to the matters subsequently raised in Mr. Vear's letter of March 30, 1987.

The March 30, 1987 letter requested a written reply to Mr. Vear's letters of November 3, 1986, December 30, 1986 and February 24, 1987. The Council-Appeal committee noted that Mr. Baker's letter of January 8, 1987 merely indicated that his response was with his lawyers. The committee therefore determined that Mr. Baker's January 8, 1987 letter did not constitute a written response to any of Mr. Vear's previous letters.

- b) Mr. Baker, in his second argument, indicated that his inability to confirm the authenticity of the writer and *contents* of a December 19, 1987 letter (Exhibit 5) prevented him from responding to the Institute.

The Council-Appeal committee noted that Mr. Baker had not been directed to respond to that letter and the contents of that letter were not at issue in Mr. Vear's letter of March 30, 1987. The committee found Mr. Baker's arguments on this point to be irrelevant.

- c) Mr. Baker, in his third argument, contended that the timing of the arrival of Mr. Vear's letter of March 30, 1987, "in the middle of tax season", prompted his detailed response to be "put on hold". Moreover, Mr. Baker asserted that a detailed response was sent to Mr. Vear in a letter dated June 23, 1987. That letter, apparently, was never received by the Institute.

The Council-Appeal committee did not view the response required by the March 30, 1987 letter to be particularly onerous. The committee agreed with the reasons of the discipline committee which state "There was no evidence led as to what may have become of Mr. Baker's June 23 letter, but the committee does not consider this to be an issue, in any event, in the circumstances of this case. The committee is of the view that, in response to a letter dated March 30, from the Institute, concerning a matter of professional conduct and demanding a written reply within 20 days, a letter dated and sent June 23 should not be considered a prompt reply, as contemplated by Rule of Professional Conduct 104. Accordingly, the committee finds Mr. Baker guilty of the charge laid."

For all the above reasons the Council-Appeal committee holds with the decision of the discipline committee and finds Mr. Baker guilty as charged.

### ORDER

The Council-Appeal committee orders that the appeal of John Alvin Baker be dismissed and that the finding of the discipline committee be upheld in its entirety.

The Council-Appeal further orders that the order of the discipline committee be amended as follows:

- 3. That Mr. Baker be and he is hereby charged costs of \$2,050 to be remitted to the Institute as follows
  - (a) \$650 within (3) three months from the date this finding and order becomes final under the bylaws.
  - (b) \$1400 within (6) six months from the date this finding and order becomes final under the bylaws.

That paragraph 5 be amended to read as follows

THAT in the event Mr. Baker fails to comply with the requirements of paragraphs 2 and 3 of this Order, he is thereupon, upon such failure to comply, suspended from the rights and privileges of membership in the Institute. Notice of his suspension, disclosing his name, is to be given in the manner specified above.

and that paragraph 6 be amended to read

That in the event Mr. Baker is suspended pursuant to paragraph 5 of this Order, the suspension shall terminate upon compliance with the terms of the order, provided that he complies within six (6) months from the date of his suspension. In the event he remains suspended for six (6) months, he shall, upon the expiry of

the six (6) months, be expelled from membership in the Institute and notice of his expulsion, disclosing his name, shall be given in the manner specified above.

In all other respects the order of the discipline committee is upheld.

## **REASONS FOR ORDER**

The Council-Appeal committee, pursuant to Bylaw 81(14) has

"all the powers conferred on it by the discipline committee under Bylaw 80 and, in addition shall have the power by order to confirm, reject or vary any decision of the discipline committee and to make any order ... in its discretion..."

It was the unanimous view of the Council-Appeal committee that Mr. Baker's appeal was without merit, and combined with the delay, constituted an abuse of the appeal process. The Council-Appeal committee felt that a clear message should be sent to all members, to the effect that, any frivolous appeals which come before the Council-Appeal committee may result in additional costs being assessed to the appellant.

The Council-Appeal committee was aware that Mr. Baker was not present to address the issue of sanctions. Nevertheless, the committee felt compelled to assess some of the costs of these proceedings to Mr. Baker and ordered that an additional cost of \$750 be added to those already ordered by the discipline committee.

Dated at Toronto this 27<sup>TH</sup> day of June, 1989 .

R.G. Gage, F  
Chairman

B.A. Joyce, FCA  
Panel Member

R.S. Clark, FCA  
Panel Member

G. Mulcahy, FCA  
Panel Member

L.B. Gray  
Panel Member

G.F. Parker, CA  
Panel Member