

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

John Alvin Baker, of Guelph, was found guilty by the discipline committee of nine charges of professional misconduct, laid by the professional conduct committee, namely

- six charges, under Rule of Professional Conduct 201, of failing to conduct himself in a manner which maintains the good reputation of the profession and its ability to serve the public interest; and
- three charges, under Rule of Professional Conduct 202, of failing to perform his professional services with due care.

The committee ordered that Mr. Baker

- be reprimanded in writing by the chair of the hearing;
- be fined \$2,000 and assessed costs of \$14,000, to be paid in installments over a specified time;
- be suspended from membership in the Institute for a period of three months;
- be reinvestigated by the professional conduct committee, or a person retained by it, in a specified manner; and
- surrender his certificate of membership in the Institute to the registrar, for the period of suspension.

Mr. Baker appealed the discipline committee's decision and order to the appeal committee, which determined the appeal be abandoned, and the decision and order of the discipline committee to be in full force and effect.

Failure to comply with the second term of the order as set out above will result in Mr. Baker's suspension from membership. Continuation of the suspension for more than one month without complying with the said term will result in his expulsion from membership.

Mr. Baker has complied with the fifth term of the order as set out above.

CHARGE(S) LAID re John Alvin Baker

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

1. THAT, the said John Baker, in or about the months of December 1988 through to March 1989, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201 of the Rules of Professional Conduct, adopted June 11, 1973, in that:
 - a) he ordered a transcript of evidence from Ms. Rosemary Hale of Hale McEwen & Associates, chartered shorthand reporters and after delivery failed to pay the cost of transcription charged by Hale McEwen and Associates;
 - b) he presented a cheque to Hale McEwen and Associates in the amount of five hundred and seventy two dollars for payment of transcription fees and failed to ensure that the cheque would be honoured when presented for payment within a reasonable time;
 - c) he advised Ms. Rosemary Hale that a cheque presented to her for payment was not honoured because he had put a stop payment on the cheque when in fact it had been returned non-sufficient funds;
 - d) he represented to Ms. Hale that there was an agreement between Ms. Hale and himself that he would pay for a transcript, prepared by-her,. at the rate of \$1.00 per page when there was no such agreement and in fact he had been advised at the outset prior to the preparation of the transcript that the charge was \$4.00 per page transcribed.
2. THAT, the said John Baker, in or about the months of September 1988 through July 1989, while carrying out an engagement for Phil Musgrave, failed to conduct himself at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201 of the Rules of Professional Conduct, adopted June 11, 1973, in that;
 - a) he failed to complete work for his former client Phil Musgrave after having agreed to do so, on a timely basis;
 - b) he made representations to the successor accountant Mr. William Sims, CA that certain work undertaken by John Baker for Phil Musgrave and his company Black Dot Communications Limited was almost complete and committed to provide it to Mr. Sims in a timely fashion and he failed to honour his commitment;
 - c) he failed to provide on a timely basis books and records, the property of his former client Phil Musgrave, to the successor accountant Mr. William Sims, CA after having been requested to do so.

3. THAT, the said John Baker, in or about the years 1987 and 1988 failed to conduct himself at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201 of the Rules of the Professional Conduct, adopted June 11, 1973, in that;
 - a) he instructed his client Phil Musgrave to deliver certified cheques payable to Revenue Canada in the amount of \$100 to Mr. Baker and agreed to forward them to Revenue Canada and then failed to forward to Revenue Canada some eight cheques delivered to him for that purpose;
 - b) he lost eight certified cheques delivered to him, on his instructions, by his client Phil Musgrave each in the amount of \$100 which had been entrusted to him for forwarding to Revenue Canada;
4. THAT, the said John Baker, in or about the period April 1988 through July 1989 failed to conduct himself at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201 of the Rules of Professional Conduct, adopted June 11, 1973, in that;
 - a) he accepted an engagement on behalf of his client Sandi McQuaid to prepare and file personal income tax returns for the 1987 taxation year and failed to file the returns on her behalf with Revenue Canada on time;
 - b) after having been entrusted with the receipts, invoices and other records of the business of Sandi McQuaid Courier Service and of Sandi McQuaid personally he lost them.
 - c) he indicated to his client Sandi McQuaid that he would deliver to her records of her business, Sandi McQuaid Courier Service, on September 29, 1988 and then, without reasonable excuse, failed to do so;
 - d) he deposited to his own account a cheque that had been provided to him by his client Sandi McQuaid and accepted on the condition that it would not be cashed unless gas and oil receipts for her company Sandi McQuaid Courier Service were returned by him even though the condition was not met as he failed to return such receipts;
 - e) he represented to his client Sandi McQuaid that she had never provided to him gas and oil receipts for her business when in fact she had delivered such gas and oil receipts to his care.
5. THAT, the said John Baker, in or about the years 1987 and 1988 while carrying out an engagement for Sean Rea and Collette Rea and companies with which they were associated, failed to conduct himself at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201 of the Rules of Professional Conduct, adopted June 11, 1973, in that;
 - a) he accepted an engagement to prepare tax returns for 1986 on behalf of Sean Rea and Collette Rea and he failed to complete same within the time agreed upon by himself and his clients;

- b) he accepted an engagement to prepare tax returns for 1986 on behalf of 713641 Ontario Limited and he failed to complete same within the time agreed upon by himself and his clients;
 - c) he arranged numerous meetings with his clients, Sean Rea and Collette Rea, and then failed to attend them without notifying the clients;
 - d) he undertook to mail completed tax returns for the year 1987 for his clients Sean Rea and Collette Rea to Revenue Canada and failed to do so without advising his clients;
 - e) after having been entrusted with the completed tax returns for the year 1987 for his clients Sean Rea and Collette Rea he lost them.
6. THAT, the said John Baker, in or about the period December 1988 through July 1989 failed to conduct himself at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201 of the Rules of Professional Conduct, adopted June 11, 1973, in that;
- a) he failed to return to his client Bill Jacobs and Stone Construction Equipment Limited records and documentation belonging to the limited company when requested to do so;
 - b) he failed to respond to correspondence from the successor accountant Larry Hellerman, CA;
 - c) he represented to Larry Hellerman, CA and/or his staff that information pertaining to Bill Jacobs and Stone Construction Equipment Limited would be forwarded to Larry Hellerman, CA and then failed to forward the information.
7. THAT, the said John Baker; in or about the year 1987, in carrying out an engagement with respect to the preparation of income tax returns for Stone Construction Equipment Limited for the year ended December 31, 1986, failed to perform his professional services with due care contrary to Rule 202 of the rules of professional conduct adopted June 11, 1973, in that;
- a) the balance sheet for Stone Construction Equipment Limited as at December 31, 1986 did not balance;
 - b) there were unreconciled differences between the client's records of loan balances owing to related parties and loan balances shown on the balance sheet for Stone Construction Equipment Limited as at December 31, 1986;
 - c) there were no supporting schedules attached to client copies of Stone Construction Equipment corporate tax returns for the year ended December 31, 1986;
8. THAT, the said John Baker, in or about the period 1987 through 1988 failed to conduct himself at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201 of the Rules of Professional Conduct adopted June 11, 1973, in that;

- a) he accepted an engagement on behalf of his clients Dan Turner and Deborah Turner and Dealin' Dan's Stereo and T.V. Ltd. to prepare and file corporate tax returns, personal tax returns and T4 slips and summaries for the 1987 taxation year and he failed to file same;
9. THAT, the said John Baker, in or about the years 1986 through 1987, in carrying out an engagement with respect to the preparation of personal income tax returns for Deborah Turner for the years 1985 and 1986, failed to perform his professional services with due care contrary to Rule 202 of the Rules of Professional Conduct adopted June 11, 1973, in that;
- a) in preparing the 1985 tax returns he improperly filled in the child tax credit resulting in its disallowance;
 - b) in preparing the 1985 tax returns he showed instalment tax payments having been paid when they were not;
 - c) he failed to file the 1985 tax returns on time having accepted the responsibility for doing so;
 - d) he failed to file the 1986 tax returns on time having accepted the responsibility for doing so.
10. THAT, the said John Baker, in or about the years 1986 through 1987, in carrying out on engagement with respect to the preparation of personal income tax returns for Dan Turner for the years 1985 and 1986, failed to perform his professional services with due care contrary to Rule 202 of the Rules of Professional Conduct adopted June 11, 1973, in that;
- a) in preparing the 1985 tax returns he claimed deductions on account of RRSP contributions and failed to file receipts as required after having been provided with same by his client;
 - b) in preparing the 1985 tax returns he claimed deductions on account of charitable donations and failed to file receipts as required after having been provided with same by his client;
 - c) he failed to file the 1985 tax returns on time having accepted the responsibility for doing so;
 - d) in preparing the 1986 tax returns he claimed a special deduction from income in the amount of \$4,212 which was not supportable;
 - e) in preparing the 1986 tax returns he claimed deductions on account of RRSP contributions and failed to file receipts as required after having been provided with same by his client;
 - f) he failed to file the 1986 tax returns on time, having accepted the responsibility for doing so.
11. THAT, the said John Baker, in or about the years 1988 and,1989, failed to conduct himself at all times in a manner which will maintain the good reputation of the profession

and its ability to serve the public interest contrary to Rule 201 of the Rules of Professional Conduct adopted June 11, 1973, in that;

- a) he undertook to provide to the successor accountant, Mr. Steven Loree, CA, information pertaining to his former clients Dan Turner, Deborah Turner and Dealin' Dan's Stereo and then failed to provide same.

DATED at Toronto this 6th day of December 1989.

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

DISCIPLINE COMMITTEE re John Alvin Baker

DECISION AND REASONS IN THE MATTER OF: Charges against JOHN ALVIN BARER, CA, a member of the Institute, under Rules 201 and 202 of the Rules of Professional Conduct, adopted June 11, 1973.

DECISION AND WRITTEN REASONS FOR THE DECISION MADE JULY 27, 1990

These proceedings before the discipline committee of the Institute of Chartered Accountants of Ontario were convened on May 1, 14, 15, 16 and 25, June 4, 5, 26 and 27 and July 26 and 27, 1990.

Mr. Brian Bellmore attended on behalf of the professional conduct committee. Mr. Baker attended with, and was represented by, his counsel, Mr. Aubrey E. Golden. The professional conduct committee had laid eleven charges of professional misconduct against Mr. Baker. Each charge was particularized. Mr. Baker entered a plea of not guilty to each of the eleven charges.

DECISION

THAT, having seen, heard and considered the evidence, THE DISCIPLINE COMMITTEE FINDS John Alvin Baker not guilty of charges Nos. 1 and 3 and guilty of charges Nos. 2, 4, 5, 6, 7, 8, 9, 10 and 11.

REASONS

The discipline committee recognizes the burden of proof to which it holds the professional conduct committee, which is that it must establish the professional misconduct alleged in each charge by a reasonable preponderance of credible, clear and cogent evidence. The discipline committee must then make a determination of guilt or innocence based upon the evidence, on a balance of probabilities. In order to meet the committee's task as established in Bylaw 80(5), which states that the discipline committee shall find the member or student guilty or not guilty of a charge, the committee must determine the facts or make findings of fact.

As in any case where there is conflicting evidence, the committee, of necessity, will accept some of the evidence and reject some of the evidence in determining the facts relevant to each particular charge. This does not necessarily mean that evidence rejected by the committee was not credible or that the witness giving that evidence was not credible. There are many occasions in which a witness who is truthful is confused by the questions on or about specifics of what actually happened, or simply cannot remember.

With respect to a number of the charges we hereinafter deal with, the committee has made certain findings of fact. In doing so the committee recognizes that it has accepted some evidence, given weight to some evidence and rejected other evidence or given it little weight. The committee does not in each instance explicitly set out what evidence it rejects. The facts as we find them to be are based on the evidence which we found to be clear, cogent and credible. It necessarily follows that if there is other evidence which is inconsistent with the facts as we determine them, we have not accepted that other evidence.

The committee recognizes that the issue of credibility, in particular the credibility of the member charged, is a significant issue in these charges. The member's credibility was the subject of specific attack by the professional conduct committee. It was put in issue by his own counsel and was the basis for a defence to many of the charges. The committee therefore recognizes that it must make a determination of Mr. Baker's credibility in any charge where his credibility is in issue. It was the decision of the committee that it would make a specific determination as to the member's credibility with respect to each charge, rather than make a general finding that the member was, or was not, credible. It will be obvious in the reasons below what decision the committee reached on this issue with respect to each charge.

Charge No. 1 - Not Guilty

In the committee's opinion, the evidence was clear that the member ordered a transcript of evidence from Ms. Rosemary Hale and paid the cost of transcription by cheque. The committee found it difficult to deal with particular (a), alleging a failure to pay the cost of transcription, and then to turn to particular (b) and deal with the allegation that the member failed to honour a cheque which purportedly was in payment of that which he was alleged in particular (a) not to have paid at all. There seemed to be some duplication in the particulars of the charge.

The committee was of the view that delivery of the cheque was payment for the cost of transcription but that the member clearly failed to ensure that the cheque would be honoured when presented for payment through his own action of putting a stop payment on the cheque. The committee was influenced by the evidence led that the cheque was the subject of a stop payment order. The specific letter signed by an official of the Royal Bank of Canada was considered more reliable than the routinely-generated debit memos which indicated an "n.s.f." reason for not honoring the cheque.

The committee found both the member and Ms. Hale credible with respect to this charge, even though the evidence was clearly conflicting. The committee believes the member was confused, both as to his notes and as to the agreement that was made with Ms. Hale at the time. The committee believes both witnesses were confused in some respects as to the events that took place.

The committee is also strongly of the view that disputes between members of the Institute and their suppliers, regardless of that supplier's relationship with the Institute, will ordinarily not pass the threshold of being matters of professional misconduct. For there to be a conviction under Rule 201, it is the committee's view that the member's conduct must be such that it fails to maintain both the good reputation of the profession and its ability to serve the public interest. The committee is of the view that Mr. Baker's conduct was not laudatory and did not enhance the good reputation of the profession, but the committee saw nothing which would impair the profession's ability to serve the public interest. The committee thus finds the member not guilty of the charge. It is not the role of this committee to arbitrate commercial disputes.

Charge No. 2 - Guilty

The committee was impressed by the testimony of Mr. William Sims, the successor accountant for the particular client. The evidence was that Mr. Baker undertook to complete certain work for the client and to provide the completed work to the client and/or his new accountant. This work, when ultimately completed, was certainly not completed in a timely fashion, as it was many months after the statutory deadline. The commitments made to the successor accountant were not honoured in a timely fashion and were not honoured in the manner expected from a member of this Institute when dealing with a fellow member on a client's change of accountant.

There was some question as to whether there were books which were not turned over, but it was quite clear that records of the client were not turned over when requested to be and on a timely basis. These records clearly encompassed at least the financial statements and tax returns of the client. The member's own testimony was that certain of this information was provided many months after the required filing date and the committee was not impressed with the reasons advanced by the member for his failure to respond in a timely fashion. Thus the guilty *finding*.

Charge No. 3 - Not Guilty

The committee was not impressed with the evidence of Mr. Phil Musgrave relative to the certified cheques. There is no question the cheques existed and there is certainly no question that they were not cashed. Both of these facts are clear from the evidence. From that point the evidence of Mr. Musgrave and the member conflicts. The evidence we accept is that Mr. Baker did not request that these *instalment cheques* be submitted because there was no need for Mr. Musgrave to be paying tax at that time. These cheques were certified and it defies logic and common sense that all eight certified cheques, delivered separately and a month apart, would be lost by the member, especially when he testified that he never received them at all. The committee finds Mr. Musgrave's evidence confused on some points. The committee finds the member's evidence credible in this instance and thus finds him not guilty of this charge.

Charge No. 4 - Guilty

The evidence of both the member and his client was clear that the member accepted an engagement to prepare and file personal income tax returns and failed to file the returns on time. The evidence was that the client signed the personal tax return and left it with Mr. Baker for filing after attachment of financial statements, and it is clear from evidence and the notices from Revenue Canada that the return was not filed on time. It is the committee's view that this particular is the substance of the charge.

With respect to the handling of the client's records, the evidence was that the client received back her records except for the gas and oil vouchers. The committee was impressed by the evidence introduced by the member and believed that Sandi McQuaid, while honestly believing that she had provided all those documents, may have been mistaken as to what she had included in the envelope she delivered. Her record-keeping was not formal and some of the amounts entered in the tax return by Mr. Baker were not actual but estimated figures. The distinction between which amounts were actual and which were estimated were all known the last week of April when the return was prepared. The committee believes there is reasonable doubt that the member ever had the receipts, in spite of the client's strong belief to that effect. The committee was also not convinced that the cheque tendered in payment of Mr. Baker's account was conditional on his return of the receipts, which he indicated he did not have. The evidence is also clear from the testimony of both the client and the member that Mr. Baker did not deliver the records as promised on September 29, 1988, nor did he call to either cancel or rebook the appointment set up for that purpose. With respect to this individual particular, the committee is not convinced that the event breaches the threshold test of Rule 201 relative to the maintenance of the good reputation of the profession and its ability to serve the public interest.

The issue that does pass that threshold is particular (a), and the evidence is clear that the member accepted the engagement and failed to file the returns on time. This is evidenced by the member's own testimony and by the lack of assessment by Revenue Canada and the subsequent assessment of the late filed returns. For those reasons the member was found guilty of the charge.

Charge No. 5 - Guilty

The testimony of both the member and the witnesses confirm the fact that Mr. Baker accepted an engagement to prepare tax returns for 1986 on behalf of Sean and Collette Rea. These returns were completed and returned to Mr. Baker prior to April 30 as they were incorrect. The returns ultimately were not provided to the clients until the latter part of June. Thus, they were clearly not completed within the time agreed upon by the clients, who expected them by April 30, and were certainly not completed by the deadline established by statute.

Similarly, the engagement to prepare tax returns for the corporation was quite clear, but the returns that were prepared were not complete returns and were missing a substantial amount of basic information. The evidence was clear as to the incompleteness of the returns and it is the committee's view that the engagement as accepted was not completed within the time frame agreed upon.

The evidence of the member and of the two clients with respect to the allegations set out in particulars (c) and (e) [particular (d) having been withdrawn by the professional conduct committee], is more in conflict. It is clear the clients had difficulty reaching Mr. Baker and meeting with him, but the evidence conflicts as to the specifics of the arrangements made relative to these meetings. Again, the committee questions whether this type of issue crosses the threshold of being professional misconduct under Rule 201.

Similarly, with respect to the 1987 year, the evidence of the parties was in clear conflict as to whether the incorrect tax returns were returned to Mr. Baker for correcting or whether he instructed the client to simply correct the returns and mail them in. It is clear the returns were not filed by the April 30th deadline and it is also clear from the testimony of both parties that the returns were ultimately redone in September, 1988 and filed at that time. The evidence is clear that the clients normally mailed the returns themselves after reviewing them. There was no follow-up on the returns until demands that they be filed were received from Revenue Canada. There is some question as to whether clients as meticulous in record-keeping as these clients would permit their tax returns to sit uncompleted if they had returned them to the member for correcting and filing. The committee was troubled by the lack of documentary evidence as to whether or not the tax returns had been returned to the member, as testified to by the clients but denied by the member.

The *finding* of the committee relative to charge No. 5 is that the member is guilty, as the evidence reviewed above clearly indicates that the engagements that were accepted were not completed within the terms of those engagements.

Charge No. 6 - Guilty

The evidence is clear that the member returned to the client copies of the copies of certain records that he had obtained from the client. The evidence also is that bank statements and cancelled cheques were returned to the client. There were no formal books of account, and it is the view of the committee that the work sheet and adjusting journal entries, under those circumstances, and the adjusting journal entries under any circumstances, formed part of the client's records and that the member was obliged to return them to the client. Working papers of the member are clearly the property of the member, but it is the committee's view that the adjusting journal entries and the work sheet, in the absence of a general ledger, become part of the client's records. They ought to have been returned and they were not, as is clear from the testimony of the member and Mr. L. Hellerman and also from the exhibits in evidence.

With respect to the other particulars, in a sense the member responded to certain of the correspondence and it is clear the response is not what the writer of the correspondence had wanted to hear. With respect to the issue of credibility, the committee found in favor of Mr. Hellerman and did not find his evidence to be self-serving. We believe that the member did not honour the commitment he made to Mr. Hellerman. Commitments made to a fellow practitioner at the time of a change of accountant by a client are extremely important in serving the public interest and maintaining the standards of the profession, as it is imperative that clients not be abused or inconvenienced in such a situation. For the reasons above indicated, the committee found the member guilty of the charge. .

Charge No. 7 - Guilty

The documentary evidence and the testimony of both parties indicated that the balance sheet that was provided to the client and attached to the client's copy of the tax returns did not balance. It is the member's responsibility to ensure that the procedures within the office are such that the quality of the product leaving the office maintains the standards of the profession and that his professional services are performed with due care. It is accepted that the member was unaware that the balance sheet that was attached did not balance but that does not alter the fact that the financial statements provided to the client were in an unbalanced state.

The client copies of the tax returns submitted in evidence clearly did not have attached to them the T2S1, the T2S4 or the T2S8, and were thus incomplete tax returns. These are supporting schedules that were required to complete the tax returns. Similarly, the client's records, which were submitted in evidence relative to the various shareholder and related-party balances, indicated balances that were not in agreement with the balances on the financial statements and there was no evidence submitted by the member reconciling these balances. For the above reasons the committee found the member guilty of charge No. 7.

Charge No. 8 - Guilty

The evidence of both parties was quite clear that there was an acceptance of an engagement by Mr. Baker to prepare and file corporate tax returns, personal tax returns and T4 slips and summaries for the 1987 taxation year. The T4's were misplaced by the client's staff and, in the opinion of the committee, are not at issue in this charge. The evidence of Mr. Turner is that he reviewed the personal tax returns with the member, signed both his and his wife's return and left the returns with Mr. Baker to be mailed. Mr. Turner was provided with copies of the returns. These returns clearly were not filed on time, as evidenced by the need to have the returns refiled later and by the subsequent assessment notices of the returns filed in the latter part of the year. The corporate tax returns that were prepared were incomplete in that they were missing certain of the schedules, the jacket and page 2 were not completed and the identification box was blank. In these respects the committee was impressed by the testimony of Mr. Steven Loree. For the above reasons the committee found the member guilty of charge No. 8.

Charge No. 9 - Guilty

This was a charge under Rule 202, relating to a failure to perform professional services with due care. The evidence of both the member and Mr. S. Loree was that the 1985 tax return was improperly completed as it related to the child tax credit. The member acknowledged in his testimony that he forgot to change the child tax credit claim after determining the incomes of both of the Turners. The claim was not allowed as it was improperly filed. Similarly, the transfer of a spousal credit was disclosed on the tax instalment line, which was not the proper disclosure for spousal transfers.

The evidence indicated that the 1985 and 1986 personal income tax returns were prepared at the same time. It was obvious from the testimony that the client was unaware of the difficulties Mr. Baker was having in obtaining information from Krazy Kellys to enable him to complete the records of the Turners and their corporation in order to determine the income of Deborah Turner. The evidence was also clear, from both the testimony of the client and of the member, that the 1985 and 1986 personal income tax returns were prepared in July, 1987 and thus were late. The question then becomes one of responsibility.

The client was consistent in his testimony that he signed the returns on behalf of himself and his wife in Mr. Baker's office and left them for the member to file and was provided with copies. He testified that Revenue Canada subsequently called for tax returns and copies were prepared in the member's office which the client signed and delivered personally to Revenue Canada. The committee found the client's memory of the circumstances to be consistent throughout examination, cross-examination and reply, and generally found the client to be a more credible witness than the member.

It is the committee's view that particular (a) is the more substantive deficiency with respect to the exercise of due care in the performance of professional services. Based on the evidence above-noted and on all the particulars, the committee finds the member guilty of charge No. 9.

Charge No. 10 - Guilty

The 1985 and 1986 personal tax returns of Dan Turner were prepared and filed at the same time as those of Deborah Turner. That is the testimony of both the member and Dan Turner. It is also the testimony of the member that these returns were prepared in July, 1987 and it is the testimony of both the member and the witness that they were, obviously then, not filed on time. The committee accepts the evidence of Dan Turner with respect to the responsibility for the filing of the 1985 and 1986 personal income tax returns of him and his wife.

The evidence was also clear from the client's copy of the tax return, and from the notices of assessment from Revenue Canada, that the special deduction claimed of \$4,212 was not supported because documentation was not filed with the departmental copy of the return. Mr. Baker was in possession of copies of the donation receipts which supported the 1985 personal tax return of Dan Turner. There was also evidence on the face of the returns that the member knew the amounts of contributions to the Registered Retirement Savings Plans in both years. The evidence of the member was that he did not have the RRSP receipts as he did not have copies of them in his files. This calls into question the member's credibility since it begs the question as to how the amounts of the various contributions were known if the receipts were not available, and that question was not specifically answered. As these returns were prepared together and filed at the same time it is not logical or reasonable that Revenue Canada would have lost the receipts on both returns.

Recognizing the testimony of the witness, Mr. Dan Turner, and the evidence submitted in the form of copies of the tax returns and notices of assessment from Revenue Canada, the committee is of the view that the member must have been in possession of these receipts and failed to file them with the returns. The committee thus finds Mr. Baker guilty of the charge.

Charge No. 11 - Guilty

Having heard the testimony of both Mr. Baker and the witness Mr. Loree, the committee believes there was an undertaking on the part of the member to provide to the successor accountant information pertaining to his former clients and that he failed to provide that

information. It is clear from the testimony of both the client and the member that the information was to be turned over and that the client was to pay Mr. Baker's account. The information was not turned over promptly and thus the client refused to pay and, ultimately, chose not to pay, because of additional work having to be performed by the successor accountant to resolve various issues. As a result, the undertaking given by Mr..Baker to the successor accountant was never fulfilled.

It was the clear admission of the member under cross-examination that he did not provide the information to Mr. Loree, the successor accountant. The evidence of the member was that the client broke the agreement by not paying so he did not turn the information over. It is the view of the committee that the client's initial undertaking was that Mr. Baker would be paid if he turned the information over in a timely fashion and that the providing of information was a prerequisite to receipt of payment. The member did not turn the information over in a timely fashion subsequent to the meeting with the successor accountant. Notwithstanding the client's non-payment, the undertaking given to the successor accountant was not fulfilled and the committee thus finds the member guilty of this charge.

The committee is cognizant of the evidence led relative to the financial and health problems experienced by the member in his professional practice and his personal life at the time of the various incidents referred to in the charges. The committee has a good deal of sympathy for the member, given the stress and conditions under which he was practising his profession at the time. As difficult and as unfortunate as these circumstances were, however, they cannot be regarded as justification for performing services without due care, if the profession is to maintain its responsibilities in serving and protecting the public interest. It is also the view of the committee that these circumstances are more a matter for discussion relative to sanctions than with respect to a determination of innocence or guilt on any particular charge. The committee is not persuaded that these are factors which would justify a lower standard of professional performance.

DATED AT TORONTO, THIS 22ND DAY OF AUGUST, 1990.

C.F. FLEMING, FCA - CHAIRMAN
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

K.V. CHERNICK, CA
W.S. HAZLITT, CA
R.J. NOBES, FCA
L.L. WORTHINGTON, CA
V. KASURAK

DISCIPLINE COMMITTEE re John Alvin Baker

ORDER IN THE MATTER OF: Charges against JOHN ALVIN BAKER, CA, a member of the Institute, under Rules 201 and 202 of the Rules of Professional Conduct, adopted June 11, 1973.

ORDER MADE NOVEMBER 1, 1990

IT IS ORDERED in respect of the charges of which John Alvin Baker was found guilty by the discipline committee in its decision of July 27, 1990:

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 \$2,000, to be remitted to the Institute pursuant to paragraph 7 hereof.
3. THAT Mr. Baker be and he is hereby charged costs of \$14,000, to be remitted to the Institute pursuant to paragraph 7 hereof.
4. THAT Mr. Baker be suspended from the rights and privileges of membership in the Institute for a period of three (3) months from the date this Decision and order becomes final under the bylaws.
5. THAT Mr. Baker be reinvestigated by the professional conduct committee, or by a person retained by the professional conduct committee, upon the completion of the three-month period of suspension ordered in paragraph 4 hereof.
6. THAT notice of this Decision and order, disclosing Mr. Baker's name, be given after this Decision and order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants.
7. THAT the fine and costs levied pursuant to paragraphs 2 and 3 hereof, respectively, totalling \$16,000, be remitted to the Institute as follows:
 - (a) a payment of \$2,000 to be remitted to the Institute within three (3) months from the date this Decision and order becomes final under the bylaws; and
 - (b) seven further payments, each in the amount of \$2,000, to be remitted to the Institute within every three month period next following the expiry of the three-month period directly preceding it, until all eight payments, each in the amount of \$2,000, have been remitted to the Institute.
8. THAT in the event Mr. Baker fails to remit a \$2,000 payment pursuant to paragraph 7 hereof within the three-month period 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 6 hereof.

9. THAT in the event Mr. Baker is suspended pursuant to paragraph 8 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 one (1) month from the date of his suspension.
10. THAT in the event Mr. Baker fails to terminate suspension within one (1) month, 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.
11. THAT Mr. Baker be and he is hereby ordered to surrender the certificate of membership in the Institute bearing his name to the registrar of the Institute within ten (10) days from the date this Decision and order becomes final under the bylaws.

DATED AT TORONTO, THIS 12TH DAY OF NOVEMBER, 1990
BY ORDER OF THE DISCIPLINE COMMITTEE

B.W STEPHENSON - SECRETARY
THE DISCIPLINE COMMITTEE

DISCIPLINE COMMITTEE re John Alvin Baker

REASONS FOR THE ORDER IN THE MATTER OF: Charges against JOHN ALVIN BARER, CA, a member of the Institute, under Rules 201 and 202 of the Rules of Professional Conduct, adopted June 11, 1973.

WRITTEN REASONS FOR THE ORDER MADE NOVEMBER 1, 1990

These proceedings before the discipline committee of the Institute of Chartered Accountants of Ontario were a continuation of a hearing last convened on July 27, 1990, at which time the committee made findings in respect of guilt and innocence on the charges laid against Mr. Baker. The committee reconvened on November 1, 1990 to hear submissions with respect to sanction and to determine the appropriate order to make in the case.

Mr. Brian Bellmore attended on behalf of the professional conduct committee. Mr. Baker attended alone and confirmed for the record that he knew that he could have counsel to represent him but that it was his decision to proceed without counsel.

Having considered the evidence and the submissions of both parties as to sanction, the discipline committee, following deliberation, made the following order:

ORDER

IT IS ORDERED in respect of the charges of which John Alvin Baker was found guilty by the discipline committee in its decision of July 27, 1990:

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 \$2,000, to be remitted to the Institute pursuant to paragraph 7 hereof.
3. THAT Mr. Baker be and he is hereby charged costs of \$14,000, to be remitted to the Institute pursuant to paragraph 7 hereof.
4. THAT Mr. Baker be suspended from the rights and privileges of membership in the Institute for a period of three (3) months from the date this Decision and Order becomes final under the bylaws.
5. THAT Mr. Baker be reinvestigated by the professional conduct committee, or by a person retained by the professional conduct committee, upon the completion of the three-month period of suspension ordered in paragraph 4 hereof.
6. THAT notice of this Decision and Order, disclosing Mr. Baker's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in CheckMark;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants.

7. THAT the fine and costs levied pursuant to paragraphs 2 and 3 hereof, respectively, totalling \$16,000, be remitted to the Institute as follows:
 - (a) a payment of \$2,000 to be remitted to the Institute within three (3) months from the date this Decision and order becomes final under the bylaws; and
 - (b) seven further payments, each in the amount of \$2,000, to be remitted to the Institute within every three month-period next following the expiry of the three-month period directly preceding it, until all eight payments, each in the amount of \$2,000, have been remitted to the Institute.
8. THAT in the event Mr. Baker fails to remit a \$2,000 payment pursuant to paragraph 7 hereof within the three-month period 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 6 hereof.
9. THAT in the event Mr. Baker is suspended pursuant to paragraph 8 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 one (1) month from the date of his suspension.
10. THAT in the event Mr. Baker fails to terminate suspension within one (1) month, 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.
11. THAT Mr. Baker be and he is hereby ordered to surrender the certificate of membership in the Institute bearing his name to the registrar of the Institute within ten (10) days from the date this Decision and order becomes final under the bylaws.

Briefly, the reasons for the committee's sanctions are set out below, with the numbers corresponding to the numbered paragraphs of the Order.

1. The committee is of the view that a reprimand is necessary as a deterrent to the member and to stress the unacceptability of his conduct as a chartered accountant.
2. The committee's view is that the imposition of a fine is appropriate in this case as both a specific deterrent to the member and as a general deterrent to the membership. Failure to cooperate with a fellow member of the Institute upon a change of accountant by a client is not only disadvantageous to the client but is conduct which makes it more difficult for the succeeding accountant to properly perform his professional responsibilities, and is conduct considered unacceptable by this committee and by the profession. In keeping with the image of the profession and its ability to serve the public interest, it is imperative that there be cooperation among practising members when a client wishes to change accountants. Such cooperation did not exist in this case and the committee is thus of the view that the fine is appropriate for deterrent purposes.
3. The imposition of costs in the amount of \$14,000 is appropriate and reasonable in this case, recognizing the length of the hearing and the committee's findings with respect to guilt. In determining the quantum of costs, the committee took into account only costs incurred after the laying of the charges and was cognizant of the fact that the member was not found guilty of all charges laid. The member's ability to pay, as perceived by the

committee, was also a determining factor in regard to the quantum and payment scheme ordered.

4. The committee is of the view that the actions of the member relative to the complainants were not actions which were callous and deliberate in their nature, but were more the result of extraneous circumstances and problems the member was having in other areas of his practice at the time. It is the committee's view that moral turpitude is not an issue. The problems in many respects concerned interpersonal relationships, and a lack of *concern for*, and generally sloppy practice style in terms of responding to, the needs of his clients. Had the committee concluded that Mr. Baker was ungovernable and that his work could not be relied upon, as was submitted by the professional conduct committee, then the expulsion sought by the professional conduct committee would have been the appropriate sanction in this case. While this committee did not reach the above conclusions, it was of the view that the extraneous circumstances and problems affecting Mr. Baker did not amount to justification for his failure to adhere to the rules of professional conduct. In order to specifically deter him from similar conduct in the future, and to deter other members from this sort of conduct, the committee determined that a suspension of three months was an appropriate and necessary sanction. In arriving at this conclusion, the committee carefully weighed the circumstances of this case and the findings and sanctions imposed in past cases for professional misconduct of a similar nature or degree of seriousness.
5. In view of the fact that the committee ordered a suspension, and in view of the fact that the member had ignored a previous suspension, levied as a result of his failure to pay annual fees, and had continued to practise as a chartered accountant, the committee felt it appropriate to order a re-investigation by the professional conduct committee following the period of suspension, to verify that the member complied with the terms of this Order and did not practise as a chartered accountant during his suspension. To so practise would be looked upon as a serious disregard for the disciplinary process and the self regulating function of the Institute and would be conduct totally unbecoming an Institute member.
6. The committee ordered notice and publication of its decision and order, including disclosure of the member's name, as both a specific deterrent to the member and as a general deterrent to all members. The committee considers publicity necessary, as well, to demonstrate to the public that the profession is regulating itself so as to retain public confidence in the profession's ability to self-govern.
7. In deciding upon a timetable for the periodic payment of the fine and costs assessed, the committee took into account Mr. Baker's submissions as to his financial situation. While sympathetic to the member's need to extend the time for payment, the committee also considered it important that some tangible form of compliance with the order begin relatively quickly.
- 8., 9. & 10. The contingent sanctions of suspension and, ultimately, expulsion for non-compliance with discipline committee orders, are necessary to the preservation of the profession's reputation and its ability to serve the public interest, by enabling the profession to ultimately deal with members who demonstrate themselves to be ungovernable.
11. The committee has ordered the return of the member's certificate of membership as a specific deterrent to the member, to stress the seriousness of the offences. In addition,

the committee considers it prudent to order the return of the member's certificate to ensure it cannot be displayed during the period of suspension.

DATED AT TORONTO, THIS 16th DAY OF JANUARY, 1991.

C.F. FLEMING, FCA - CHAIRMAN
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL

K.V. CHERNICK, CA
W.S. HAZLITT, CA
R.J. NOBES, FCA
L.L. WORTHINGTON, CA
V. KASURAK

APPEAL COMMITTEE re John Alvin Baker

IN THE MATTER OF: *The Chartered Accountants Act, 1956 (4-5, Elizabeth II, Ch. 7 of the Statutes of Ontario) and the Bylaws of the Institute of Chartered Accountants of Ontario (Institute), made pursuant to the Act; and*

Proceedings against John Alvin Baker, CA, a member of the Institute; . under Rules 201 and 202 of the Rules of Professional Conduct, approved June 15, 1981; and

A notice of appeal to the appeal committee dated February 21, 1991 and filed on behalf of John Alvin Baker, CA; and

An application filed by the professional conduct committee of the Institute of Chartered Accountants of Ontario for an order to dismiss the appeal of John Alvin Baker, CA; and

An application filed by Mr. John Alvin Baker, CA pursuant to Bylaw 87(j)).

ORDER

Two applications came before this panel of the appeal committee on Tuesday, May 28, 1991. The first application, filed on behalf of the professional conduct committee, sought an order dismissing the appeal of Mr. Baker. The second application, filed by Mr. Baker, sought, pursuant to Bylaw 870), an order dispensing with certain portions of the transcript from the proceedings before the professional conduct committee from which Mr. Baker's appeals. Mr. Baker advised during the course of hearing both applications, that he wished to withdraw his application and this panel agreed to this request.

The professional conduct committee was represented by its legal counsel Mr. Paul Farley. Mr. Baker attended and represented himself. Mr. Baker confirmed that he understood that he had the right to be represented by counsel but wished to proceed on his own behalf.

The appeal committee, after reviewing the documentation before it, and after hearing the submissions on behalf of all the parties to the hearing, orally gave the following order and advised all parties that written reasons for this order would follow.

In respect to the application filed by the professional conduct committee of the Institute of Chartered Accountants of Ontario for an order to dismiss the appeal of John Alvin Baker commenced by a notice of appeal dated February 21, 1991, it is ordered:

1. That Mr. Baker file with the secretary of the appeal committee an affidavit no later than 4:30 p.m., June 17, 1991 and that such affidavit attest to the fact that Mr. Baker has ordered the complete transcript of the proceedings before the discipline committee from which Mr. Baker appeals and that such order has been accepted by the court reporting firm, without further negotiation or payment required for the completion of the transcripts;
2. That upon receipt of the affidavit in accordance with the terms set out in paragraph 1 of this Order, that the secretary of the appeal committee schedule a date for the hearing of Mr. Baker's appeal to be held on or after September 16, 1991; and

3. That in the event Mr. Baker fails to file the affidavit as required by this Order in accordance with the terms set out in paragraph 1, his appeal shall thereupon have been abandoned and the Order of the discipline committee made on November 1, 1990 will be in full force and effect.

DATED AT TORONTO this 31ST day of MAY, 1991, by order of the appeal committee.

P.G. SCHOFIELD – SECRETARY
APPEAL COMMITTEE

APPEAL COMMITTEE re John Alvin Baker

IN THE MATTER OF: *The Chartered Accountants Act, 1956 (4-5, Elizabeth II, Ch. 7 of the Statutes of Ontario) and the Bylaws of the Institute of Chartered Accountants of Ontario (Institute), made pursuant to the Act; and*

Proceedings against John Alvin Baker, CA, a member of the Institute, under Rules 201 and 202 of the Rules of Professional Conduct, approved June 15, 1981; and

A notice of appeal to the appeal committee dated February 21, 1991 and filed on behalf of John Alvin Baker, CA by himself; and

An application filed by the professional conduct committee of the Institute of Chartered Accountants of Ontario for an order to dismiss the appeal of John Alvin Baker, CA; and

An application filed by Mr. John Alvin Baker, CA pursuant to Bylaw 870).

WRITTEN REASONS FOR THE ORDER MADE MAY 28, 1991

Both the applicant and the counsel for the respondent were advised of the decision of this panel of the appeal committee and the order it was making after it had been reached. We now give these reasons for our decision. The respondent, the professional conduct committee of the Institute of Chartered Accountants of Ontario brought an application in which it sought an order dismissing Mr. Baker's appeal dated February 21, 1991 for failure to request, pay for and file a complete transcript of the discipline proceedings for purposes of his appeal.

In considering the professional conduct committee's application we duly noted the provisions of Bylaw 87(i) and 0), which state

- (i) the proceedings at any formal hearing or at any appeal shall be recorded in shorthand or otherwise and where an appeal is taken under the bylaws the party appealing shall, subject to clause 0) hereof, request, pay for and file a complete transcript of the proceedings, and the transcript shall be conclusive evidence of the proceedings for the purposes of the appeal;
- (j) in any appeal, and upon application made on notice to all parties not later than 15 days from the date of the filing of the notice of appeal, the chairman of the appeal committee may, in his absolute discretion, dispense with the requirement of filing a complete transcript as provided in clause (i) thereof and may order instead that the party appealing file only those portions of the transcript as bear upon the grounds set forth in the notice of appeal;

The panel of the committee concluded that paragraph (i) of Bylaw 87 does not prescribe a mandatory period in which an appellant must request, pay for and file a complete transcript of the proceedings under appeal. We conclude that the fifteen (15) day period outlined in Bylaw

870) does not apply to the time for filing a transcript. In our view, the Bylaws are silent on this issue and for this reason, although we are not convinced that Mr. Baker has proceeded as expeditiously as he might, we feel that Mr. Baker's appeal should be allowed to continue subject to his compliance with our order.

In addition to responding to the professional conduct committee's application, Mr. Baker made submissions with respect to Mr. Farley's standing to act as counsel for the professional conduct committee. In our view, after hearing these submission, we do not accept the proposition the Rules of Civil Procedure in Ontario apply to proceedings of this committee or, in any event, it was necessary for the professional conduct committee to file some form of Notice of Change in Solicitors.

Mr. Baker also submitted that he had not ordered a transcript because he was waiting to see if the professional conduct committee would file a cross-appeal. We found that Mr. Baker's submissions on this point were not relevant to the issue of the professional conduct committee's application which dealt with the time in which the appellant must request, pay for and file a complete transcript of the proceedings under appeal.

In allowing Mr. Baker the continued right to appeal, subject to the terms of our order, we recognize that as a matter of fairness to all the parties, appeals from decisions of the discipline committee should proceed as expeditiously as possible.

DATED AT TORONTO this 1st day of June, 1991.

C.S. BARLTROP, FCA—CHAIR OF THE HEARING

APPEAL COMMITTEE re John Alvin Baker

IN THE MATTER OF: *The Chartered Accountants Act, 1956 (4-5, Elizabeth II, Ch. 7 of the Statutes of Ontario) and the Bylaws of the Institute of Chartered Accountants of Ontario (Institute), made pursuant to the Act; and*

Proceedings against John Alvin Baker, CA, a member of the Institute, under Rules 201 and 202 of the Rules of Professional Conduct, approved June 15, 1981; and

A notice of appeal to the appeal committee dated February 21, 1991 and filed on behalf of John Alvin Baker, CA by himself on the same date; and

The order of the appeal committee dated May 31, 1991; and

An application dated June 28, 1991, filed by the professional conduct committee of the Institute of Chartered Accountants of Ontario for an order to dismiss the appeal of John Alvin Baker, CA for failure to comply with the Order of the appeal committee dated May 31, 1991

ORDER

A panel of the appeal committee met on September 17, 1991 to consider an application brought by the professional conduct committee dated June 28, 1991.

The professional conduct committee, in its application, was seeking an order from the appeal committee confirming that Mr. Baker has abandoned his appeal. It was the position of the professional conduct committee that as Mr. Baker had failed to comply with clause 1 of the order of the appeal committee dated May 31, 1991, his appeal, in accordance with clause 3 of the order, had been abandoned.

The professional conduct committee was represented by its legal counsel Mr. Paul Farley. Mr. Baker attended and represented himself. Mr. Baker confirmed that he had the right to be represented by counsel but wished to proceed on his own behalf.

The appeal panel, after hearing the evidence and the submissions of both parties and after reviewing the documentation before it made the following order and advised all parties that written reasons for this order would follow.

In respect to the application of the professional conduct committee, dated June 28, 1991, for an order confirming that Mr. Baker has abandoned his appeal commenced by a notice of appeal dated February 21, 1991, it is ordered:

1. That Mr. Baker has failed to comply with clause 1 of the appeal committee's order dated May 31, 1991 and as such clause 3 of that order applies and Mr. Baker's appeal is deemed to be abandoned; and

2. That pursuant to clause 3 of order of the appeal committee dated May 31, 1991, the decision and order of the discipline committee, made on November 1, 1990, is in full force and effect.

DATED AT TORONTO this 27TH day of September, 1991.

P.G. SCHOFIELD - SECRETARY.
APPEAL COMMITTEE

APPEAL COMMITTEE re John Alvin Baker

IN THE' MATTER OF: *The Chartered Accountants Act, 1956 (4-5, Elizabeth II, Ch. 7 of the statutes of Ontario) and the Bylaws of the Institute of Chartered Accountants of Ontario (Institute), made pursuant to the Act; and*

Proceedings against John Alvin Baker, CA, a member of the Institute, under Rules 201 and 202 of the Rules of Professional Conduct, approved June 15, 1981; and

A notice of appeal to the appeal committee dated February 21, 1991 and filed on behalf of John Alvin Baker, CA by himself on the same date; and

The Order of the appeal committee dated May 31, 1991; and

An application dated June 28, 1991, filed by the professional conduct committee of the Institute of Chartered Accountants of Ontario for an order to dismiss the appeal of John Alvin Baker, CA for failure to comply with the Order of the appeal committee dated May 31, 1991

DECISION

This panel of the appeal committee met on September 17, 1991 to consider an application brought by the professional conduct committee dated June 28, 1991. The professional conduct committee, in its application, was seeking an order from the appeal committee confirming that Mr. Baker had abandoned his appeal. It was the position of the professional conduct committee that as Mr. Baker had failed to comply with clause 1 of the Order of the appeal committee dated May 31, 1991, his appeal, in accordance with clause 3 of the Order, had been abandoned.

The professional conduct committee was represented by its legal counsel Mr. Paul Farley. Mr. Baker attended and represented himself. Mr. Baker confirmed that he understood that he had the right to be represented by counsel but wished to proceed on his own behalf.

The appeal panel, after hearing the evidence and the submissions of both parties and after reviewing the documentation before it, allowed the professional conduct committee's application. The panel advised the parties of its decision and stated that written reasons would follow. These are the reasons for the appeal committee's decision.

REASONS FOR DECISION

The professional conduct committee, in an application dated June 28, 1991, was seeking an order by the appeal committee confirming that Mr. Baker had abandoned his appeal. It was the position of the professional conduct committee that as Mr. Baker had failed to comply with clause 1 of the Order of the appeal committee dated May 31, 1991, his appeal, in accordance with clause 3 of the Order, had been abandoned.

It was the professional conduct committee's position that Mr. Baker had not complied with clause 1 of the Order of the appeal committee dated May 31, 1991, which states;

1. That Mr. Baker file with the secretary of the appeal committee an affidavit no later than 4:30 p.m., June 17, 1991 and that such affidavit attest to the fact that Mr. Baker has ordered the complete transcript of the proceedings before the discipline committee from which Mr. Baker appeals and that such order has been accepted by the court reporting firm, without further negotiation or payment required for the completion of the transcripts.

It was also the professional conduct committee's position that Mr. Baker's affidavit, sworn on June 14, 1991, and filed with the secretary of the appeal committee, attested that an agreement had been reached with the court reporting firm, without further negotiation or payment required for the completion of the transcripts. The position advanced by the professional conduct committee was that no such agreement had been made as of June 14, 1991 and as such, Mr. Baker had not complied with clause 1 of the appeal committee's Order.

Included with the professional conduct committee's application dated June 28, 1991, were affidavits sworn by Carol Denman and Nora Glass of the firm Atchison and Denman Court Reporting Services Limited. The position taken by the professional conduct committee was that the affidavits indicated that there was no agreement on June 14, 1991 between Mr. Baker and the court reporting firm that the completed transcripts would be done without further negotiation or payment.

It was submitted by the professional conduct committee that Mr. Baker's failure to comply with clause 1 of the Order would automatically invoke clause 3 of the Order which states;

3. That in the event Mr. Baker fails to file the affidavit as required by this Order in accordance with the terms set out in paragraph 1, his appeal shall thereupon have been abandoned and the Order of the discipline committee made on November 1, 1990 will be in full force and effect.

Accordingly, it was clear that the point the panel had to decide was whether or not paragraph 1 of its earlier Order had been complied with.

On June 17, 1991 the secretary of the appeal committee was in receipt of an affidavit filed by Mr. Baker. The affidavit, sworn on June 14, 1991, states in part;

1. I verily believe to be true that the court reporting firm has accepted such Order without further negotiation or payment required for the completion of the transcripts;
2. I have sent to the court reporting firm by bonded courier, \$7,000.00 which is the mid-point of the estimate of \$6,000.00 to \$8,000.00, and such payment has been accepted by Nora Glass and Carol Denman in my telephone discussions as sufficient payment to complete the transcript

The professional conduct committee called both Carol Denman and Nora Glass as witnesses. Mr. Baker was called as a witness on his own behalf.

On the face of the evidence that was before this panel it was clear that there were three points that were not in dispute.

1. That as of June 17, 1991 additional payment was required by the court reporting firm for the completion of the transcripts;

2. That as of June 17, 1991 Mr. Baker did not have an accepted order from the court reporting firm for the completion of the transcripts because the court reporting firm required an additional \$4,000 from Mr. Baker before it would accept his order; and
3. That the \$4,000 which in his affidavit, Mr. Baker claimed to have sent by bonded courier to the court reporting firm, was not in fact sent and as of June 17, 1991 the court reporting firm had only \$3,000 of the \$7,000 payment required to complete Mr. Baker's order.

While Mr. Baker filed an affidavit within the time required, the facts set out in the affidavit were not true. The Order was not only that Mr. Baker file an affidavit, but that he was to have done the things which the affidavit said he did.

Filing an affidavit which was not true did not constitute compliance with the Order. The offered explanation that the Order required only an affidavit, and not that the facts set out in the affidavit be true, is simply not tenable.

Accordingly, clause 1 of this panel's previous Order was not complied with and clause 3 of that Order is in effect. Mr. Baker's appeal is deemed to be abandoned. The Order of the discipline committee made on November 1, 1990 is now in effect.

This panel found that the member swore and filed an affidavit which was not true and which he knew was not true. Such conduct is simply unacceptable. Whether his conduct breached the rules of conduct or constitutes perjury are matters for others to determine.

DATED AT TORONTO this 20TH of November, 1991.

C.S. BARLTROP, FCA - CHAIR OF THE HEARING

Members of the Panel to the Hearing

J.M. Allinotte, FCA
General A. Brown
W.J. Detenbeck, FCA
F.C. Hill, FCA
R.G. Stackhouse, FCA