

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO**  
**THE CHARTERED ACCOUNTANTS ACT, 1956**

**APPEAL COMMITTEE**

- IN THE MATTER OF:** An appeal dated July 13, 1992 and filed by John Alvin Baker, CA, against the Decision and Order of the discipline committee of the Institute of Chartered Accountants of Ontario made on June 25, 1992.
- AND:** Proceedings against John Alvin Baker, CA, a member of the Institute, under Rules 205(c) and 201.1 of the Rules of Professional Conduct, approved on June 15, 1981.
- AND:** An application filed by the professional conduct committee requesting an order from the appeal committee to dismiss Mr. Baker's appeal.

**ORDER**

On Friday, November 27, 1992, a panel of the appeal committee met to consider an application, dated September 29, 1992, filed by the professional conduct committee.

The professional conduct committee, in its application, was seeking an order from the appeal committee that the appeal of John Alvin Baker, CA be dismissed.

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 chose to proceed on his own behalf.

The appeal panel, after hearing the evidence and the submissions of both parties, issued the following order and advised both parties that the Written Reasons for the Order would follow.

In respect of an application filed by the professional conduct committee and dated September 29, 1992, it is ordered that

1. The appeal of John Alvin Baker, CA, dated July 13, 1992 be dismissed in its entirety; and
2. That the decision and order of the discipline committee of the Institute of Chartered Accountants of Ontario made on June 25, 1992, become effective, immediately.

**REASONS FOR ORDER**

The professional conduct committee in an application filed on September 29, 1992 was requesting an order from the appeal committee to dismiss the appeal of John Alvin Baker. It was the position of the professional conduct committee that Mr. Baker had failed to comply with the transcript provisions of Bylaw 87(2)(h) and (i).

Further to the application, Mr. Farley submitted that Mr. Baker was a member who is quite familiar with the appeal process and in particular with the importance of obtaining a transcript of the discipline hearing proceedings. Mr. Farley further submitted that it was not the first time that Mr. Baker had appeared before the appeal committee on a matter of failing to comply with the bylaw requirements regarding the filing of transcripts.

It was Mr. Baker's position that he had made every reasonable effort to obtain the transcripts. He further submitted that despite two letters and repeated telephone calls to Mrs. Gazzard (the court reporter who had attended the discipline hearing proceedings) he was unable to order the transcript. Mr. Baker further stated that once he had contacted Mrs. Gazzard, she told him that her conditions for producing the transcript were that he provide payment in cash, in advance, as that was her established method for accepting contracts from individual clients. Mr. Baker said that he was getting the "run-a-round" and wished to have the money for the transcripts paid into the court and to have the court order the production of the transcripts.

In our review of the matter we first considered the provisions of Bylaw 87(2)(h) and (i) regarding the filing of transcripts, and the provisions of Bylaw 87(2)(o) as to the appeal committee's authority to act.

The requirements of Bylaw 87(2)(h) and (i) are as follows:

- (h) ...where an appeal is taken under the bylaws the party appealing shall, subject to clause (i) hereof, request, pay for and file a complete transcript of the proceedings...
- i) 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 chair of the appeal committee may, in his or her absolute discretion, dispense with the requirement of filing a complete transcript...

The provisions of Bylaw 87(2)(o) state

notwithstanding any other provision of these bylaws, the appeal committee may, in particular cases, proceed in such manner and grant such relief as the nature of the case or natural justice may require.

It was clear from the evidence of both parties that a transcript had not been filed. It was also clear that there had not been an application by Mr. Baker to dispense with the requirement to provide transcripts. We gave due consideration to all the evidence presented as to why the transcripts were not filed.

We heard evidence from both Mrs. Gazzard and Mr. Baker. We found Mrs. Gazzard to be a very credible witness; we found Mr. Baker to be less so. Mrs. Gazzard spoke with Mr. Baker once during his discipline committee hearing of June 24 and 25, 1992 and once following receipt of his letter of November 17, 1992 (filed as Exhibit 2). Mrs. Gazzard's notes, filed as Exhibit 3, reflect her understanding of the events and conversations following receipt of Mr. Baker's letter of November 17, 1992. We are satisfied that at no time did Mrs. Gazzard accept an order for the production of transcripts. Her request to have money paid in advance was, as she stated, the established method when accepting a contract from an individual client. Mrs. Gazzard's requirement for money paid in advance was not, in our view, unreasonable.

Mr. Baker's evidence was that he had sent two letters and tried to contact Mrs. Gazzard by telephone. Mr. Baker claimed that his order for the transcripts was conveyed in a letter dated October 8, 1992 sent by regular mail to Mrs. Gazzard (filed as Exhibit 4), and in a letter dated November 17, 1992 delivered by hand. Mrs. Gazzard testified that she did not receive the October letter.

We considered the possibility that Mr. Baker, in good faith, may have thought that he had placed an order for transcripts. He claimed that his verbal order for transcripts was made with Mrs. Gazzard at the June 24-25 discipline committee hearing. Mr. Baker later admitted that he did not make a verbal order then or at any other time prior to his November 17, 1992 letter. We are satisfied that he knew beforehand the condition advanced by Mrs. Gazzard for production of the transcripts, which was that an order for transcripts, whether made verbally or in writing, would

not be accepted until payment was first received. If Mr. Baker's October 8, 1992 letter was his written order for transcripts, it would not have satisfied Mrs. Gazzard's requirement regarding payment in advance. We have no satisfactory proof that the letter was sent. Furthermore, knowing the importance to Mr. Baker of having this letter sent, we are puzzled as to why he failed to ensure its delivery.

In reaching our decision to allow the professional conduct committee's application, there were several factors that we took into consideration.

While Mr. Baker was not represented by legal counsel he is not unfamiliar with the discipline and appeal processes of the Institute. He has been before the appeal committee on a previous occasion regarding the failure to obtain transcripts. He knew or should have known the importance and consequences of his failure to obtain a transcript. We are not persuaded that Mr. Baker made a reasonable effort to contact Mrs. Gazzard and, in any event, this committee is satisfied that Mr. Baker had not ordered the necessary transcripts as of the date of this hearing.

Both Mr. Baker and Mr. Farley made submissions as to when the appeal was deemed to be filed and when the provisions of Bylaw 87 would have taken effect. The transcripts represented two days of discipline committee proceedings and could have been produced in a short period of time. The transcripts could have been ordered any time after Mr Baker filed his notice of appeal.

Because Mr. Baker was familiar with the appeal and discipline processes, there was no reason for the committee to rely on the provisions of Bylaw 87(2)(o). Indeed the provisions of Bylaw 87(2)(o) would permit us to set the terms and conditions for filing transcripts notwithstanding the provisions of Bylaw 87(h) and (i). Mr. Baker is very familiar with the requirement to file transcripts. His last appeal was dismissed as a consequence of his failure to provide transcripts. We are of the view that his non-compliance does not arise out of ignorance but out of an attempt to delay the discipline and appeal processes of the Institute. These processes serve to protect the interests of both the member and the public. In this case protecting the public interest is paramount and must take priority over Mr. Baker's interest.

For all the above reasons, the application of the professional conduct committee is granted and Mr. Baker's appeal is dismissed. Further, the decision and order of the discipline committee made on June 25, 1992 is effective as of Friday, November 27, 1992.

DATED THIS AT TORONTO, THIS 18TH DAY OF JANUARY, 1993



D.T. McCLURKIN, CA -- CHAIR OF THE HEARING  
THE APPEAL COMMITTEE

MEMBERS OF THE PANEL:

W.J. DETENBECK, FCA  
B.N. GORY, FCA  
D.J. HERLICK, CA  
D.M. STONE, CA  
V. INGLIS (Public representative)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO  
THE CHARTERED ACCOUNTANTS ACT, 1956

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against JOHN ALVIN BAKER, CA, a member of the Institute, under Rules 201.1 and 205(a) of the Rules of Professional Conduct, as amended.

TO: John Alvin Baker  
180 Waterloo Avenue  
Guelph, Ontario  
N1H 3J3

WRITTEN REASONS FOR THE DECISION AND ORDER MADE JUNE 25, 1992

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on June 24 and 25, 1992.

Mr. Paul Farley attended on behalf of the professional conduct committee. Mr. Baker attended and represented himself. He confirmed that he understood he had the right to be represented by counsel but wished to proceed on his own behalf. Mr. Baker entered a plea of not guilty to each of the two charges laid against him.

A document brief was filed by Mr. Farley. After hearing the evidence and the submissions of both parties, and after reviewing the documentation filed before it, the discipline committee found Mr. Baker guilty of the charges.

The reasons for the committee's finding of guilty are set out below.

The Finding of Guilty

The charges laid by the professional conduct committee against Mr. Baker read as follows:

1. *THAT, the said John A. Baker, on or about the 14th day of June, 1991, signed an affidavit which he knew was false or misleading, and filed it with the secretary to the appeal committee in purported compliance with an order of that committee dated May 31, 1991, contrary to Rule 205(a) of the Rules of Professional Conduct.*
2. *THAT, the said John A. Baker, on or about the 14th day of June, 1991, swore a false affidavit in an effort to appear to comply with an order made by the appeal committee on May 31, 1991, and did thereby fail to maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the Rules of Professional Conduct.*

The affidavit signed by Mr. Baker referred to in the charges stated:

1. *I have ordered the complete transcript of the proceedings before the discipline committee from which I appeal;*



2. *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;*
3. *I have sent to the court reporting firm by bonded courier, \$7000.00, which is the mid-point of the estimate of \$6000.00 to \$8000.00, and such payment has been accepted by Nora Glass and Carol Denman in my telephone discussions as sufficient payment to complete the transcript. Upon completion of the transcript there might be a refund owing to me, or a small balance owing which will be paid upon completion of the transcript and rendering of the final account. In any event the complete transcript will be done without further negotiation or payment.*

The affidavit was required of Mr. Baker by the appeal committee, in an order made by it on May 28, and dated May 31, 1991. The applicable paragraph of the order stated:

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;*

The consequence to Mr. Baker of not complying with the above requirement was also set out in the appeal committee's order, as follows:

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.*

The testimony of Carol Denman, the owner and president of the court reporting firm, and of Nora Glass, the firm's office manager, was accepted by the committee over that of Mr. Baker. Their testimony and their affidavits, contained in the document brief, clearly indicate that Mr. Baker's affidavit was false, in at least the following respects:

1. His affidavit stated that "the court reporting firm has accepted such order without further negotiation or payment required for completion of the transcripts", when, in fact, additional payment in the amount of \$4,000.00 was still required to be paid as of June 14, 1991, the date of the affidavit. The final payment of \$4,000.00 was not actually paid by Mr. Baker until July 8, 1991.
2. Mr. Baker had not sent to the court reporting firm, by bonded courier or any other method, the \$7,000.00 which he claimed to have sent in his affidavit. In fact, he had only given the court reporting firm \$3,000.00.
3. Mr. Baker's affidavit stated that his order for the transcript had been accepted. The evidence of both Carol Denman and Nora Glass was that the court reporting firm had not accepted Mr. Baker's order for the transcript as of June 14, 1992, because the firm had not received the \$7,000.00 payment.

Mr. Baker, as a member of the chartered accounting profession, is well aware of the attest function, and the importance of ensuring that statements he signs are correct and truthful. During Mr. Baker's testimony, he stated that his affidavit was 'essentially the truth and not deliberately false', and that 'the affidavit had small defects'. The discipline committee did not find Mr. Baker credible in his assertions. The whole substance of the affidavit is false

as at the date it was signed. Mr. Baker signed and filed the affidavit in order to satisfy the appeal committee's order and deadlines so that his appeal could continue, when, in fact, he had not done those things required by the appeal committee, to which he had attested.

Based upon the evidence, as outlined above, the discipline committee found Mr. Baker guilty of the charges.

### The Sanctions

The committee heard submissions from both parties with respect to sanction and, after deliberation, made the following order:

### **ORDER**

IT IS ORDERED with respect of the charges:

1. THAT Mr. Baker be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Baker be and he is hereby fined the sum of \$2,000, to be remitted to the Institute within ninety (90) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Baker be and he is hereby expelled from membership in the Institute.
4. 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.
5. THAT Mr. Baker surrender his certificate of membership in the Institute to the registrar of the Institute with ten (10) days from the date this Decision and Order becomes final under the bylaws.

The reasoning behind the committee's order as to sanction is set out below.

### Expulsion

The discipline committee is acutely aware that expulsion is the most punitive sanction it can order, and that, consequently, it should be ordered only in respect of the most serious of infractions of the rules of professional conduct. In this case, as in most that involve expulsion, the principle consideration is that of general deterrence to the membership at large.

Mr. Baker was found guilty of signing an affidavit which he knew was false or misleading. This was done in order to satisfy a requirement to enable him to appeal a previous order of the discipline committee. This is a complete affront to the disciplinary process of this Institute.

This committee believes that Mr. Baker's professional life is ungovernable by the Institute.

The submissions and evidence indicate

- a pattern of failing to honour written and oral commitments, not only to the Institute, but also to his clients;
- a pattern of not placing his professional commitments to clients and the profession above his own difficulties and interests; and
- a complete disregard for the Institute's disciplinary system, as demonstrated by his signing and filing with the appeal committee an affidavit which he knew to be false, particularly after the appeal committee had made every reasonable effort to afford him the opportunity to legitimately preserve his right of appeal.

### Fine

A small fine of only \$2,000 was imposed, as Mr. Baker has already sustained a substantial financial burden through fines imposed under previous orders.

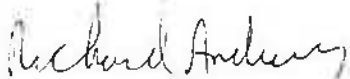
### Publicity

The committee followed its normal practice of ordering that notice be given of its decision and order, disclosing the member's name. For the principle of general deterrence to be effective, all members must be made aware of hearings and their results.

### Surrender of Certificate

Any member who is expelled must be ordered to surrender his or her certificate of membership, so that the former member cannot continue to display the certificate in order to mislead the public as to his or her membership status.

DATED AT TORONTO, THIS 13th DAY OF AUGUST, 1992  
BY ORDER OF THE DISCIPLINE COMMITTEE



R.C.H. ANDREWS, CA - CHAIR  
THE DISCIPLINE COMMITTEE

### MEMBERS OF THE PANEL:

I.R. FLEMMING, CA

H.R. KLEIN, CA

R.J. NOBES, FCA

J.B. SCOTT, CA

B.W. BOWDEN, PhD (Public representative)