

John Sandro Burigana: Summary, as Published in *CheckMark*

John Sandro Burigana, of Toronto, was found guilty, under Rules 201.1 and 205, of failing to maintain the good reputation of the profession and its ability to serve the public interest, and of making oral reports, statements or representations which he knew or should have known were false or misleading. Mr. Burigana altered a cheque payable to him to avoid the effect of a stop payment order, and then made false and misleading statements to the professional conduct committee investigator. The discipline committee ordered that he be fined \$1,000 and expelled from the Institute. Upon appeal, the appeal committee overturned the expulsion order, and substituted therefore a one year suspension from membership, on the grounds that Mr. Burigana's actions had not involved any clients, there was no evidence of lack of professionalism in his work generally, no harm had been done to the general public, and his conduct was due, at least in part, to severe stress. The appeal committee made a strong recommendation to the member that he seek psychological counseling in stress management.

Mr. Burigana returned to MEMBERSHIP IN GOOD STANDING on May 19, 1996

CHARGE(S) LAID re John Sandro Burigana

The Professional Conduct Committee hereby makes the following charges against John S. Burigana, CA, a member of the Institute:

1. THAT, the said John S. Burigana in or about the period May 1992 through November 1992 failed to maintain the good reputation of the profession and its ability to serve the public interest in that he altered a cheque payable to him from Bourmara Enterprises Limited dated May 7, 1992 for the purpose of negotiating it and thereafter received the proceeds of the cheque in the amount of \$3,300 when he knew that the drawer had stopped payment on the cheque or otherwise did not intend him to cash it, contrary to Rule 201.1 of the rules of professional conduct.
2. THAT, the said John S. Burigana in or about the period February 1993 through June 1993 made oral reports, statements or representations which he knew or should have known were false or misleading contrary to Rule 205 of the rules of professional conduct, in that during and investigation conducted by professional conduct committee, he gave conflicting information to an investigator appointed by the committee, and in particular,
 - (a) he gave the investigator differing explanations as to why a cheque payable to him from Bourmara Enterprises Limited in the amount of \$3,300 had the cheque number on the top right corner cut off and the computer encoded cheque number on the bottom left corner covered with tape; and
 - (b) he gave the investigator conflicting information as to whether or not he altered the date on a cheque payable to him from Bourmara Enterprises Limited in the amount of \$3,300 and his reasons for doing so.
3. THAT, the said John S. Burigana in or about the period of February 1993 through June 1993 failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that he attempted to mislead the professional conduct committee by asking the investigator appointed by the committee to recall his report to the committee and retract the admissions he had made previously to the investigator, contrary to Rule 201.1 of the rules of professional conduct.
4. THAT, the said John S. Burigana in or about the period October 1991 through July 1992 failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that he collected and diverted to himself and retained for himself fees owing to Bourmara Enterprises Limited, contrary to Rule 201.1 of the rules of professional conduct.

DATED at Toronto this 29th day of September 1993

R.F FAWCETT, CA – DEPUTY CHAIR

PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re John Sandro Burigana

DECISION AND ORDER IN THE MATTER OF: Charges against **JOHN SANDRO BURIGANA, CA**, a member of the Institute, under **Rules 201.1 and 205** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE JUNE 23, 1994

DECISION

THAT, having seen, heard and considered the evidence, THE DISCIPLINE COMMITTEE FINDS John Sandro Burigana not guilty of charges Nos. 3 and 4 and guilty of charges Nos. 1 and 2.

ORDER

IT IS ORDERED in respect of the charges Nos. 1 and 2:

1. THAT Mr. Burigana be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Burigana be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Burigana be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Burigana'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. Burigana surrender his certificate of membership in the Institute 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 29TH DAY OF JUNE, 1994
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re John Sandro Burigana

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **JOHN SANDRO BURIGANA, CA**, a member of the Institute, under **Rules 201.1 and 205** of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION MADE JUNE 7 AND THE ORDER MADE JUNE 23, 1994

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were held on February 23, May 4, 5, 6, and June 6, 7 and 23, 1994. Mr. Paul Farley attended on behalf of the professional conduct committee, and Mr. Burigana attended with his counsel, Mr. Robert Hopkins.

On February 23, the panel was told that Mr. Burigana had only engaged Mr. Hopkins as his counsel the previous evening. Mr. Hopkins advised the panel that Mr. Burigana was experiencing various health problems, both of a physical and mental nature. He asked for an adjournment of the hearing to enable the preparation of a proper defense to the charges brought against his client. Mr. Burigana had been made aware well before the hearing date of the advisability of retaining legal counsel. Mr. Farley reviewed all notices sent to Mr. Burigana that outlined the procedures of the hearing process.

The panel reluctantly granted an adjournment of the hearing, peremptory on the defence, to fixed dates in May, 1994.

The hearing reconvened on May 4, 1994, at which time Mr. Burigana pleaded not guilty to the following four charges which had been laid against him by the professional conduct committee:

1. *THAT, the said John S. Burigana in or about the period May 1992 through November 1992 failed to maintain the good reputation of the profession and its ability to serve the public interest in that he altered a cheque payable to him from Bourmara Enterprises Limited dated May 7, 1992 for the purpose of negotiating it and thereafter received the proceeds of the cheque in the amount of \$3,300 when he knew that the drawer had stopped payment on the cheque or otherwise did not intend him to cash it, contrary to Rule 201.1 of the rules of professional conduct.*
2. *THAT, the said John S. Burigana in or about the period February 1993 through June 1993 made oral reports, statements or representations which he knew or should have known were false or misleading contrary to Rule 205 of the rules of professional conduct, in that during an investigation conducted by professional conduct committee, he gave conflicting information to an investigator appointed by the committee, and in particular,*
 - (a) *he gave the investigator differing explanations as to why a cheque payable to him from Bourmara Enterprises Limited in the amount of \$3,300 had the cheque number on the top right corner cut off and the computer encoded cheque number on the bottom left corner covered with tape; and*

- (b) *he gave the investigator conflicting information as to whether or not he altered the date on a cheque payable to him from Bourmara Enterprises Limited in the amount of \$3,300 and his reasons for doing so.*
3. *THAT, the said John S. Burigana in or about the period February 1993 through June 1993 failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that he attempted to mislead the professional conduct committee by asking the investigator appointed by the committee to recall his report to the committee and retract the admissions he had made previously to the investigator, contrary to Rule 201.1 of the rules of professional conduct.*
4. *THAT, the said John S. Burigana in or about the period October 1991 through July 1992 failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that he collected and diverted to himself and retained for himself fees owing to Bourmara Enterprises Limited, contrary to Rule 201.1 of the rules of professional conduct.*

Counsel for the professional conduct committee called as witnesses Ms. Mary Bourke and the committee's investigator Mr. John Douglas. Mr. Hopkins called nine witnesses, including Mr. Burigana, a psychologist, two chartered accountants and various family members.

Mr. Farley objected to the panel's hearing many of the witnesses called on behalf of Mr. Burigana on the basis that their testimony amounted to character evidence only, which, he submitted, was not relevant to the issue of guilt or innocence, but only to the issue of sanction, in the event of a finding of guilty on any charge. Though the panel also felt that much of the defence testimony was in the nature of character evidence which did not address the charges specifically, it allowed the testimony.

The panel found much of the evidence and line of questioning that was presented by Mr. Burigana's counsel not to be relevant to the specific charges before the panel. To be fair to the member charged, the panel allowed the member's counsel great leeway in his examination and cross-examination of witnesses.

After hearing and considering all the evidence presented, the panel found Mr. Burigana not guilty of charges Nos. 3 and 4 and guilty of charges Nos. 1 and 2.

Charge No. 1

As to charge No. 1, the panel felt that the important issues to address were:

- Did Mr. Burigana know that the cheque for \$3,300 was subject to a stop payment order?
- Did Mr. Burigana intentionally alter the cheque to avoid the stop payment?

Mary Bourke testified that Mr. Burigana was informed of the stop payment on the \$3,300 cheque, and Mr. Burigana admitted that Ms. Bourke had asked him not to cash the cheque.

Mr. Douglas, the investigator for the professional conduct committee, testified that Mr. Burigana admitted to him that he had altered the cheque in question.

During Mr. Burigana's testimony, he admitted that the cheque was given to him in an unaltered state by Mary Bourke. He was vague as to how the alterations were made, but did indicate that when he was at the bank on November 6, 1992 to deposit the cheque, the teller questioned him about the cheque and the deposit slip made out in error. He then left the bank, made a trip to a Grand & Toy store, returned to the bank and deposited the cheque. The cheque, in its altered state, had the number on the top corner cut off, had holes punched in the computer-encoded cheque number on the bottom and had this area covered with tape, and had the date altered from May 7, 1992 to May 17, 1992 by the placing of a "1" in front of the "7" in the cheque's date.

The panel felt that the above circumstances made it clear that Mr. Burigana did, in fact, know the cheque was subject to a stop payment order, and that he altered the cheque in order to circumvent the stop payment and obtain the funds for his personal use.

Based on the evidence, the panel found Mr. Burigana guilty of charge No. 1.

Charge No. 2

As to charge No. 2, the panel felt that the important issue to address was:

- Did Mr. Burigana make false or misleading statements to the professional conduct committee investigator?

The panel heard during the testimony of John Douglas that Mr. Burigana had first told him a story about losing the cheque and then finding it six months later, and that he had not made any alterations to the cheque. According to Mr. Douglas' testimony, the member later called and asked him if his investigation could be stopped if the allegations made by Mary Bourke were withdrawn. In another call to Mr. Douglas, Mr. Burigana then admitted to altering the cheque.

Mr. Burigana admitted in his testimony that he had first told the investigator that Mary Bourke had made the alterations to the cheque and that he had received the cheque from her in that state. He later testified that it took him several weeks to realize that he, himself, had altered the cheque.

Based on the evidence, the panel found Mr. Burigana guilty of charge No. 2.

Charge No. 3

As to charge No. 3, the panel felt that the important issues to address were:

- Did Mr. Burigana ask the investigator to recall his report so that his admission would not be reported to the professional conduct committee?
- Was this an attempt by Mr. Burigana to mislead the professional conduct committee?

During the testimony of the investigator, the committee heard about a telephone call made by Mr. Burigana to Mr. Douglas at approximately 10:00 a.m. on March 12, 1993, in which Mr. Burigana admitted to Mr. Douglas that he had altered the cheque in order to circumvent the stop payment order which he knew had been placed on the cheque by Mary Bourke. The member indicated that he had sought and received forgiveness from his wife, her parents, his own parents, and God, and now wished to obtain forgiveness from the Institute of Chartered Accountants of Ontario. By way of a second call made about 7:00 p.m. on March 12, 1993, Mr.

Burigana indicated to Mr. Douglas that he wanted him to eliminate from his report all details of the earlier telephone conversation. Mr. Burigana was informed by the investigator that the report had already been sent to the Institute, and that if he had any further representations to make he should contact the Institute directly.

The panel was not satisfied that Mr. Burigana's second call on March 12, 1993 was necessarily an attempt to mislead the professional conduct committee. Mr. Burigana did not request that the investigator withdraw his report in its entirety but was seeking an opportunity to further explain his conduct.

Based on the evidence, the panel found Mr. Burigana not guilty of charge No. 3.

Charge No. 4

As to charge No. 4, the panel felt that the important issue to address was:

- Did Mr. Burigana attempt to collect and divert fees to himself that were actually due to Bourmara Enterprises Limited?

The panel heard evidence concerning the arrangements in place between Bourmara Enterprises Limited and Mr. Burigana for the sharing of fees and accounts. Mr. Burigana was entitled to a percentage of the fees billed by Bourmara to clients for whom he had done work. He also had clients of his own. The result was that at times it became unclear, both to the parties and to their respective clients, who the proper payee was for services performed. Clients would, and did, make cheques payable to the wrong party. Bourmara and Mr. Burigana had agreed to produce a reconciliation of amounts billed and collected by each party, and page 12 of the document brief shows an attempt at reconciliation of fees and collections. The reconciliation showed that there were amounts that had been collected on behalf of Bourmara by Mr. Burigana. During the preparation of this reconciliation, the relationship between Bourmara and Mr. Burigana deteriorated tremendously, and finally broke down altogether. The panel felt that the confusion which had arisen in respect of the billing and collection of the fees in question could have been reconciled had the relationship not ended.

Based on the evidence, the panel found Mr. Burigana not guilty of charge No. 4.

After making its findings of guilty on charges Nos. 1 and 2, the panel heard submissions in respect of sanction from the parties, upon which it deliberated, and made the following order:

ORDER

IT IS ORDERED in respect of charges Nos. 1 and 2:

1. THAT Mr. Burigana be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Burigana be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Burigana be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Burigana'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. Burigana surrender his certificate of membership in the Institute to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws.

The reasons for the panel's order are briefly set out below.

Reprimand

The panel is of the view that a reprimand is necessary as a specific deterrent to the member, to stress to him the unacceptability of his conduct as a chartered accountant.

Fine

The professional conduct committee requested a fine in the range of \$3,000 to \$5,000. The panel concurred with counsel for the professional conduct committee that a fine serves both as a general and a specific deterrent. In setting the quantum of the fine at \$1,000, the panel took into consideration the apparent financial position of the member. In addition, the appropriate size of fine was discussed in conjunction with deliberations as to the appropriateness of expulsion in this case.

Expulsion

The principle of general deterrence is of utmost importance in this case. The charges of which Mr. Burigana was found guilty involved moral turpitude. The panel did not hear any evidence that Mr. Burigana had made restitution in respect of the \$3,300 which he was able to obtain by altering the cheque so as to avoid the stop payment. It was submitted on behalf of the member that he had recently made arrangements to begin paying the amount back at some future date. The panel formed the opinion that there had been no remorse demonstrated by the member to date. The conduct of this member, which so undermines the reputation of the profession, cannot be tolerated by the discipline committee. The panel came to the conclusion that a sanction less than expulsion would not be appropriate in the circumstances of this case, and ordered accordingly.

Notice

The disciplinary process of a professional body must be viewed by its members and the public as an open process. Not having heard any rare or unusual circumstances to persuade it to withhold the member's name from publication when giving notice of this case, the panel made the usual order as to the giving of notice.

Surrender of Certificate

As is usual in cases of expulsion, the member was ordered to surrender his certificate of membership in the Institute.

DATED AT TORONTO, THIS _____ DAY OF _____, 1994
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

C.J. BURKE, FCA

F.J. DUNN, CA

L.R. FLEMMING, CA

J.J. LONG, CA

R.W. WARKENTIN, P.Eng. (Public representative)