

John Walter Jeffery: Summary, as Published in *CheckMark*

John Walter Jeffery, of Mount Forest, was found guilty of one charge under Rule 104 of failing to promptly reply in writing to a letter from the Institute, and one charge under Rule 203.2 of failing to cooperate in a practice inspection. Mr. Jeffery failed to forward working paper files for inspection despite repeated requests from the practice inspection area. The matter was eventually referred to the professional conduct committee, but still the files were not delivered. The requested files were finally provided to Institute staff approximately one week before the discipline hearing. Mr. Jeffery was fined \$2,500 and charged costs of \$2,500.

CHARGE(S) LAID re John Walter Jeffery

The Professional Conduct Committee hereby makes the following charges against John Walter Jeffery, a member of the Institute:

1. THAT the said John Walter Jeffery, in or about the period October 4, 2002 to January 28, 2003, failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct a practice inspection, contrary to Rule 203.2 of the rules of professional conduct.
2. THAT the said John Walter Jeffery, in or about the period July 11, 2003 to September 29, 2003, failed to promptly reply in writing to a letter from the Institute dated June 25, 2003 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

Dated at Toronto, Ontario this 30th day of September, 2003.

G. W. MILLS, FCA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re John Walter Jeffery

DECISION AND ORDER IN THE MATTER OF: Charges against **JOHN WALTER JEFFERY, CA**, a member of the Institute, under **Rules 104 and 203.2** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE JANUARY 16, 2004

DECISION

THAT, having seen and considered the evidence, and having heard the plea of guilty to charges Nos. 1 and 2, the Discipline Committee finds John Walter Jeffery guilty of charges Nos. 1 and 2.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Jeffery be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Jeffery be and he is hereby fined the sum of \$2,500, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Jeffery be and he is hereby charged costs fixed at \$2,500, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Jeffery's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
5. THAT in the event Mr. Jeffery fails to comply with any of the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within this three month period, 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 above, and in a newspaper distributed in the geographic area of Mr. Jeffery's practice or employment.

DATED AT TORONTO THIS 22ND DAY OF JANUARY, 2004.
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re John Walter Jeffery

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **JOHN WALTER JEFFERY, CA**, a member of the Institute, under **Rules 104 and 203.2** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE JANUARY 16, 2004

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on January 16, 2004 to hear charges brought by the professional conduct committee against John Walter Jeffery, a member of the Institute.
2. The professional conduct committee was represented by Ms. Barbara Glendinning. The member was present without the benefit of legal counsel, and acknowledged that he had been advised of his right to be represented by counsel prior to the hearing.
3. The decision and order of the panel were made known at the hearing. The formal, written decision and order was signed by the secretary to the discipline committee and sent to the parties on January 22, 2004. These reasons, given in writing pursuant to Bylaw 574, set out the charges, the decision and the order, as well as the reasons of the discipline committee.

DECISION ON THE CHARGES

4. The charges laid against Mr. Jeffery dated September 30, 2003 read as follows:
 1. THAT the said John Walter Jeffery, in or about the period October 4, 2002 to January 28, 2003, failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct a practice inspection, contrary to Rule 203.2 of the rules of professional conduct.
 2. THAT the said John Walter Jeffery, in or about the period July 11, 2003 to September 29, 2003, failed to promptly reply in writing to a letter from the Institute dated June 25, 2003 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.
5. Mr. Jeffery entered a plea of guilty to each of the charges, and acknowledged that he could be found guilty on the basis of his plea alone. He advised that he had consulted with and received advice from legal counsel prior to the hearing.

Evidence On The Charges

6. Ms. Glendinning filed an affidavit of Mr. Grant Dickson, FCA, director of practice inspection. Attached to the affidavit was the relevant documentation referred to in these reasons.

7. Mr. Jeffery's practice was selected to be inspected under the Institute's practice inspection program during the 2002–2003 inspection year. Based on information provided by Mr. Jeffery, he was asked by correspondence dated August 21, 2002 to forward the working paper files for three specific clients to practice inspection by October 4, 2002. He did not do so. On November 5, 2002, an e-mail reminder was sent to Mr. Jeffery with the revised date of November 12, 2002 for submission of the requested files. The files were not sent.

8. By further letter dated December 17, 2002, Mr. Jeffery was again asked to forward the files, this time by January 7, 2003. In the December 17, 2002 letter, Mr. Jeffery was advised that failure to meet the January 7, 2003 filing date would result in a referral to the professional conduct committee. Mr. Jeffery did not respond and on January 28, 2003, the matter was referred to the professional conduct committee.

9. By letter dated February 17, 2003, Mr. Jeffery wrote to Ms. Alison Thomas, an associate director of standards enforcement, but did not send the requested files. He explained that he had taken employment, and was winding down his public accounting practice. He said that his family had moved, that the move had been unexpected, and that it had necessitated moving into temporary rental accommodation. He suggested that his practice inspection be deferred for a year to give his professional and private life a chance to settle down.

10. By e-mail dated June 25, 2003, Mr. Dickson wrote to Mr. Jeffery. He made reference to Mr. Jeffery's request for a deferral of his practice inspection for a year, pointed out that practice inspection was by then already into the next inspection year, and asked if the information which Mr. Jeffery had provided in the previous year had changed. Mr. Dickson requested a response from Mr. Jeffery by July 11, 2003. As of November 11, 2003, no response had been received.

Submissions Of The Professional Conduct Committee

11. Counsel for the professional conduct committee submitted that the facts set out in Mr. Dickson's affidavit established that Mr. Jeffery was guilty of both charges. Ms. Glendinning also advised the panel that Mr. Jeffery had recently provided the requested files to Institute staff.

Mr. Jeffery's Submissions

12. Mr. Jeffery apologized to the panel, to the professional conduct committee, and to the Institute, for his failure to cooperate with the Institute's practice inspection program. He advised the panel that his professional and personal life had been in turmoil, and that he had not paid the proper attention to the Institute's correspondence to him.

The Decision

13. Upon deliberation, the panel concluded that the allegations had been proven. While Mr. Jeffery's professional and personal life may have been, to use his words, in turmoil, submitting the files as requested would not have been an onerous task, and the Institute staff had provided him with ample opportunity to comply with his obligations. While sympathetic to his problems, which are similar to problems faced by many members, we could come to no other conclusion but that Mr. Jeffery's failure to respond was professional misconduct. Accordingly, after the panel deliberated, the chair read the following decision into the record:

DECISION

THAT, having seen and considered the evidence, and having heard the plea of guilty to charges Nos. 1 and 2, the Discipline Committee finds John Walter Jeffery guilty of charges Nos. 1 and 2.

ORDER AS TO SANCTION

Submissions Of The Professional Conduct Committee

14. Ms. Glendinning requested that the discipline committee reprimand Mr. Jeffery, impose a fine of between \$2,500 and \$3,500, charge him costs of \$3,500, and make the usual order as to notice.

15. Ms. Glendinning submitted that a reprimand to Mr. Jeffery was appropriate as a specific deterrent to him.

16. She further submitted that a fine was appropriate as both a specific and a general deterrent. She advised the panel that the amount of the requested fine had been determined by the professional conduct committee before Mr. Jeffery cooperated, but that as the suggested amount of the fine was at the low end of the range for such misconduct, the amount requested was still appropriate. Mr. Jeffery's cooperation with the Institute was belated, and had occurred only about a week prior to this hearing. She pointed out as well that the range of fine requested was consistent with the quantum of fines ordered in previous cases of non-cooperation.

17. Ms. Glendinning submitted that the actual costs of the investigation and prosecution easily exceeded \$10,000. In her submissions, she stated that the amount requested of \$3,500 was easily justified by the usual counsel fees for a half day hearing – \$1,500 for counsel to the discipline committee, and \$1,500 for counsel to the professional conduct committee – plus \$200 for the court reporter and \$300 for her hearing preparation time.

18. She also discussed the various aggravating and mitigating factors present in this case. The aggravating factors included the following:

- it took Mr. Jeffery 14 months to cooperate with the Institute;
- two letters and one e-mail were sent to Mr. Jeffery by practice inspection before his case was forwarded to the professional conduct committee for investigation;
- Mr. Jeffery did not respond until after his case had been referred to the professional conduct committee, and even then did not provide the requested files; and
- the requested files were ultimately provided just one week before the discipline hearing.

19. The mitigating factors included that:

- the files were ultimately submitted by Mr. Jeffery before the discipline hearing commenced, making a compliance order unnecessary; and
- Mr. Jeffery had never previously been before the discipline committee.

Mr. Jeffery's Submissions

20. Mr. Jeffery did not challenge the submissions of the professional conduct committee in any way, and again reiterated his apologies. He advised the panel that his public practice had not been successful, and that he had substantially wound it down other than for a few, small ongoing matters. He also advised that a number of his professional and personal issues, including his new employment and moving to a new home, had been largely resolved, but that he continued to have significant ongoing expenses, including the expense of two children currently in university and one soon to follow.

The Order

21. After deliberation, the hearing reconvened and the chair summarized the order. The formal order was sent to the parties on January 22, 2004, and reads as follows:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Jeffery be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Jeffery be and he is hereby fined the sum of \$2,500, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Jeffery be and he is hereby charged costs fixed at \$2,500, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.

4. THAT notice of this Decision and Order, disclosing Mr. Jeffery's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
5. THAT in the event Mr. Jeffery fails to comply with any of the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within this three month period, 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 above, and in a newspaper distributed in the geographic area of Mr. Jeffery's practice or employment.

Reprimand

22. In keeping with past cases, the panel ordered that Mr. Jeffery be reprimanded in writing by the chair of the hearing, to stress to him the serious nature of the offence and the unacceptability of his conduct.

Fine

23. The panel imposed a fine of \$2,500, both as a specific deterrent and a general deterrent. The panel determined that a fine at the lower end of the range requested was appropriate given Mr. Jeffery's financial position, and the fact that he had submitted the requested files before the discipline hearing.

Costs

24. The panel determined that it was appropriate for Mr. Jeffery, whose misconduct was the sole reason the Institute had incurred the expense involved in this proceeding, to indemnify the Institute in part for the costs incurred. The panel realized that the costs sought by the professional conduct committee, which were fully justified, would still only amount to a partial indemnification. Given the member's financial situation and obligations, however, the panel thought the sum of \$2,500 was appropriate.

Payment To Be Made Within 12 Months

25. The period of 12 months granted within which to pay the fine and costs is intended to assist Mr. Jeffery put his personal and professional life in order. His misconduct appears to have been an isolated incident in his professional life. We want him to be a member in good standing for the rest of his professional career. The financial impact of this order will not be inconsequential to him. In the interest of facilitating his ability to fulfill his personal and professional obligations, the order provides for 12 months within which Mr. Jeffery may pay the fine and costs.

Notice

26. Notice in the normal manner was determined to be appropriate by the panel. We intend the notice to be published in *CheckMark* to be a specific deterrent to Mr. Jeffery and a general deterrent to other members of the Institute. Members must be made aware that when the discipline committee finds a member guilty of professional misconduct, that fact will likely become public knowledge.

Failure To Comply

27. An order of the discipline committee which did not provide a consequence for failure to comply with its terms would be meaningless. Accordingly, a provision for the member's suspension and ultimate expulsion for failure to comply was included in the order.

28. In the event of expulsion, this fact will be published in a newspaper distributed in the geographic area of Mr. Jeffery's practice or employment, and his certificate of membership will be required to be returned to the Institute.

DATED AT TORONTO THIS 9TH DAY OF FEBRUARY, 2004
BY ORDER OF THE DISCIPLINE COMMITTEE

M. BRIDGE, CA – CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

E.R. ARCHIBALD, CA
R.I. COWAN, CA
J.G. SEDGWICK, CA
R.A. VICKERS, FCA
N.C. AGARWAL (Public representative)