

John Andrew Kelley: Summary, as Published in *CheckMark*

John Andrew Kelley, of Toronto, was found guilty of a charge under Rule 203.2 of failing to cooperate in the attempted inspection of his practice, and two charges under Rule 104 of failing to reply to correspondence from the Institute in respect of a matter of professional conduct. One of the charges under Rule 104 arose out of Mr. Kelley's failure to respond to a standards enforcement enquiry about his lack of cooperation with practice inspection, and the other arose from his failure to respond to an enquiry relating to a client complaint. Despite proper notice, Mr. Kelley did not attend the discipline hearing. He was fined \$5,000, and, on the basis that he had demonstrated himself to be ungovernable by his lack of cooperation with a client and with the Institute, was expelled from membership.

CHARGE(S) LAID re John Andrew Kelley

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

1. THAT, the said John A. Kelley, in or about the period from June 28, 1996 to January 14, 1997, failed to cooperate with officers, servants or agents of the Institute who were appointed to arrange or conduct a practice inspection, contrary to Rule 203.2 of the rules of professional conduct.
2. THAT, the said John A. Kelley, in or about the period from November 26, 1996 to January 14, 1997, failed to promptly reply in writing to a letter from the Institute in respect of a matter of professional conduct signed by the associate director of standards enforcement and dated and sent November 26, 1996 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

Dated at Toronto this 14th day of January, 1997.

JENNIFER L. FISHER, CA – CHAIR
PROFESSIONAL CONDUCT COMMITTEE

CHARGE(S) LAID re John Andrew Kelley

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

1. THAT, the said John A. Kelley, in the period March 4, 1997 to April 8, 1997, failed to promptly reply in writing to a letter from the Institute in respect of a matter of professional conduct signed by the associate director of standards enforcement and dated and sent March 4, 1997 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

Dated at Toronto this 8th day of April, 1997.

NICHOLAS M. HODSON, CA – DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re John Andrew Kelley

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

DECISION AND ORDER MADE MAY 29, 1997

DECISION

THAT, having seen and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Kelley, pursuant to Institute Bylaw 560, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to each of the charges, the Discipline Committee finds John Andrew Kelley guilty of the charges.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Kelley be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Kelley be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Kelley be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Kelley's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in *The Globe and Mail*.
4. THAT Mr. Kelley surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

DATED AT TORONTO THIS 6TH DAY OF JUNE, 1997
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re John Andrew Kelley

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

WRITTEN REASONS FOR THE DECISION AND ORDER MADE MAY 29, 1997

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on May 29, 1997.

Ms. Deborah McPhadden attended on behalf of the professional conduct committee. Mr. Kelley was not present at the hearing.

The discipline committee reviewed the affidavits of service of the Notice of Assignment Hearing and the Notice of Hearing, which were filed as exhibits. The committee was satisfied that Mr. Kelley had proper notice of the hearing, and determined to proceed with the hearing in his absence pursuant to Institute Bylaw 560. Prior to proceeding, the secretary of the discipline committee searched the common areas around the hearing room, but Mr. Kelley was not present.

A plea of not guilty was then entered on behalf of Mr. Kelley to the following charges, dated January 14, 1997, laid against him by the professional conduct committee:

1. *THAT, the said John A. Kelley, in or about the period from June 28, 1996 to January 14, 1997, failed to cooperate with officers, servants or agents of the Institute who were appointed to arrange or conduct a practice inspection, contrary to Rule 203.2 of the rules of professional conduct.*
2. *THAT, the said John A. Kelley, in or about the period from November 26, 1996 to January 14, 1997, failed to promptly reply in writing to a letter from the Institute in respect of a matter of professional conduct signed by the associate director of standards enforcement and dated and sent November 26, 1996 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.*

A plea of not guilty was also entered on the member's behalf to the following charge, dated April 8, 1997:

1. *THAT, the said John A. Kelley, in the period March 4, 1997 to April 8, 1997, failed to promptly reply in writing to a letter from the Institute in respect of a matter of professional conduct signed by the associate director of standards enforcement and dated and sent March 4, 1997 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.*

With respect to the charges dated January 14, 1997, a document brief filed on behalf of the professional conduct committee attested that:

- On June 28, 1996, the director of practice inspection informed Mr. Kelley that a practice inspection was to be scheduled, and requested certain information relating to Mr. Kelley's practice.

- When Mr. Kelley failed to respond, the director of practice inspection sent a second request for the information on August 28, 1996, to which Mr. Kelley did not respond.
- On October 4, 1996, the director of practice inspection sent by registered mail a final request for the information. Again, Mr. Kelley failed to respond.
- On November 26, 1996, the associate director of standards enforcement informed Mr. Kelley that the professional conduct committee wished to commence a review of his failure to respond to the director of practice inspection, and requested a written reply from the member.
- Mr. Kelley did not respond to the standards enforcement letter.
- With respect to the charge dated April 8, 1997, a document brief filed on behalf of the professional conduct committee attested that:
- On February 7, 1997, the professional conduct committee received a complaint about Mr. Kelley from a member of the public.
- On February 7, 1997, the associate director of standards enforcement sent a copy of the above complaint to Mr. Kelley, inviting him to respond to the allegations.
- On March 4, 1997, the associate director of standards enforcement sent a second letter to Mr. Kelley, again requesting that he respond to the complaint against him.
- Mr. Kelley did not respond to either of these letters.

After considering the evidence, and the submissions made by Ms. McPhadden, the discipline committee, upon deliberation, found Mr. Kelley guilty of all three charges. The committee heard the submissions of the professional conduct committee with respect to sanctions, and, upon further deliberation, made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Kelley be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Kelley be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Kelley be and he is hereby expelled from membership in the Institute.

4. THAT notice of this Decision and Order, disclosing Mr. Kelley's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in *The Globe and Mail*.
5. THAT Mr. Kelley surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

In considering the appropriate sanction in this matter, the discipline committee concluded that Mr. Kelley was ungovernable. Accordingly, no sanction was imposed with the objective of rehabilitating Mr. Kelley. In determining sanction, the committee kept in mind the principles of general and specific deterrence.

Reprimand

The panel believes that a reprimand in writing from the chair of the hearing stresses to Mr. Kelley the unacceptability of his conduct as a chartered accountant. The panel did not make a determination as to whether or not the complaint to which Mr. Kelley failed to respond was justified. However, on the face of the complaint, members of the public have been adversely affected by Mr. Kelley's failure to respond.

Fine

The professional conduct committee submitted that a fine should be levied against Mr. Kelley in the amount of \$5,000. The discipline committee agreed that such a fine was appropriate in this case, both as a general deterrent to like-minded members, and as a demonstration to the public of the profession's intolerance of the type of behaviour demonstrated by Mr. Kelley. Mr. Kelley's failure to cooperate with the regulatory processes of the Institute is unprofessional conduct which will not be tolerated.

Expulsion

The panel's decision that Mr. Kelley should be expelled from membership was based on the facts that:

- he had shown himself to be ungovernable by his failure to cooperate with the Institute;
- not only had he failed to cooperate with the Institute, he had failed to meet a commitment to a client, and then had failed or refused to provide any explanation or to return the client's documents as requested, so that another chartered accountant could complete the work.

Notice

The giving of notice of the committee's decision and order, disclosing Mr. Kelley's name, is, in the opinion of the panel, a general deterrent. It is this panel's responsibility to ensure that members of the profession and the general public are made aware that failure on the part of members to cooperate with the regulatory processes of the Institute will result in the imposition of serious sanctions.

Communication of the fact that the profession views breaches of its bylaws and rules of professional conduct seriously is an important factor in the governance of the profession. Such notification is also necessary 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. The committee concluded that there were no rare or unusual circumstances in this case to justify withholding publication of the member's name, nor were there grounds to interfere with the application of Bylaw 575(3). The committee therefore ordered the giving of notice by way of publication, disclosing Mr. Kelley's name, in both *CheckMark* and *The Globe and Mail*.

Certificate of membership

Since protection of the public interest is one of the basic pillars of the profession, the panel concluded that it is of utmost importance that Mr. Kelley not continue to appear to be a member of the chartered accountancy profession after his expulsion. Accordingly, he was ordered to surrender his certificate of membership.

DATED AT TORONTO, THIS 19TH DAY OF AUGUST, 1997
BY ORDER OF THE DISCIPLINE COMMITTEE

L. P. BOOKMAN, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL

E.R. ARCHIBALD, C.A.

R.I. COWAN, C.A.

J.M. MULHALL, C.A.

B.L. STEPHENS, C.A.

N.C. AGARWAL (Public representative)