

John Overton Matthews: Summary as Published in *CheckMark*

John Overton Matthews, of Cornwall, was found guilty of two charges under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest, and two charges under Rule 205 of signing or associating himself with financial statements which he knew or should have known were false or misleading. Mr. Matthews misappropriated cash from two community not-for-profit organizations of which he was the treasurer, and then prepared and presented false financial statements to the organizations in order to conceal his misappropriations. Mr. Matthews was fined \$3,000 and expelled from membership in the Institute. His appeal of the discipline committee's order was dismissed by the appeal committee.

CHARGE(S) LAID re John Overton Matthews

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

1. THAT, the said John O. Matthews, in or about the period September, 1991, to June, 1995, 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, while he was treasurer of the Cornwall Curling Club Inc., he misappropriated approximately \$40,000 cash from the said club, contrary to Rule 201.1 of the rules of professional conduct.
2. THAT, the said John O. Matthews, while he was treasurer of the Cornwall Curling Club Inc., prepared and presented to the members of the club financial statements for the year ended May 31, 1993 which misrepresented the club's financial position for the purpose of concealing his misappropriation of cash from the club, and in so doing he signed or associated himself with statements which he knew or should have known were false or misleading, contrary to Rule 205 of the rules of professional conduct.
3. THAT, the said John O. Matthews, in or about the period September, 1991, June, 1995, 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, while he was treasurer of the Cornwall United Counties Basketball Association, he misappropriated approximately \$8,600 cash from the said association, contrary to Rule 201.1 of the rules of professional conduct.
4. THAT, the said John O. Matthews, while he was treasurer of the Cornwall United Counties Basketball Association, prepared and presented to the members of the association financial statements for the eight months ended April 30, 1995 which misrepresented the surplus at the end of the period to be \$8,632 when no such surplus existed, and in doing so he signed or associated himself with statements which he knew or should have known were false or misleading, contrary to Rule 205 of the rules of professional conduct.

DATED at Toronto, this 3rd day of January, 1996.

A.M. DAVIDSON, FCA – DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re John Overton Matthews

DECISION AND ORDER IN THE MATTER OF: Charges against **JOHN OVERTON MATTHEWS, 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 17, 1996

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, charge No. 1 having been amended on consent, and having heard the plea of guilty to charges Nos. 1, as amended, 2, 3 and 4, the Discipline Committee finds John Overton Matthews guilty of charges No. 1, as amended, 2, 3 and 4.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Matthews be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Matthews be and he is hereby fined the sum of \$3,000, 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. Matthews be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Matthews' 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;
 - (c) to the Canadian Institute of Chartered Accountants; and
 - (d) to a newspaper in the community where Mr. Matthews resides.
5. THAT Mr. Matthews 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 25TH DAY OF JUNE, 1996
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re John Overton Matthews

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

REASONS FOR THE DECISION AND ORDER MADE JUNE 17, 1996

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on June 17, 1996.

Ms. Deborah McPhadden attended on behalf of the professional conduct committee. Mr. Matthews represented himself and confirmed for the record that he understood he had the right to be represented by legal counsel.

The professional conduct committee had laid two charges under Rule 201.1 and two charges under Rule 205 of the rules of professional conduct. Mr. Matthews pleaded guilty to all the charges, and confirmed that he understood that, upon a plea of guilty, and upon that basis alone, he could be found guilty by the discipline committee. The charges read as follows:

1. THAT, the said John O. Matthews, in or about the period September, 1992 to June, 1995, 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, while he was treasurer of the Cornwall Curling Club Inc., he misappropriated approximately \$40,000 cash from the said club, contrary to Rule 201.1 of the rules of professional conduct.
2. THAT, the said John O. Matthews, while he was treasurer of the Cornwall Curling Club Inc., prepared and presented to the members of the club financial statements for the year ended May 31, 1993 which misrepresented the club's financial position for the purpose of concealing his misappropriation of cash from the club, and in so doing he signed or associated himself with statements which he knew or should have known were false or misleading, contrary to Rule 205 of the rules of professional conduct.
3. THAT, the said John O. Matthews, in or about the period September, 1991 to June, 1995, 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, while he was treasurer of the Cornwall United Counties Basketball Association, he misappropriated approximately \$8,600 cash from the said association, contrary to Rule 201.1 of the rules of professional conduct.
4. THAT, the said John O. Matthews, while he was treasurer of the Cornwall United Counties Basketball Association, prepared and presented to the members of the association financial statements for the eight months ended April 30, 1995 which misrepresented the surplus at the end of the period to be \$8,632 when no such surplus existed, and in doing so he signed or associated himself with statements which he knew or should have known were false or misleading, contrary to Rule 205 of the rules of professional conduct.

Ms. McPhadden introduced an agreed statement of facts and a document brief as exhibits. Mr. Matthews called no evidence. After deliberating upon the evidence presented, the discipline committee found Mr. Matthews guilty of all four charges.

After making its findings of guilty on the charges, the discipline committee heard submissions as to sanction from both parties, whereupon, after deliberation, it made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Matthews be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Matthews be and he is hereby fined the sum of \$3,000, 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. Matthews be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Matthews' 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;
 - (c) to the Canadian Institute of Chartered Accountants; and
 - (d) to a newspaper in the community where Mr. Matthews resides.
5. THAT Mr. Matthews 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.

The reasons for the sanctions ordered by the committee are briefly set out below.

REPRIMAND

The committee was 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 discipline committee concurred with counsel for the professional conduct committee that a fine serves both as a general and a specific deterrent. The committee took into consideration Mr. Matthews' submission as to his limited financial resources and levied a \$3,000 fine to be paid within twelve months.

EXPULSION

Mr. Matthews argued that he should not be expelled because personal family problems and alcohol abuse caused the conduct giving rise to the charges. The committee concluded that, even if these problems contributed to the conduct, the deliberate attempt to misappropriate large sums of money over a lengthy period of time could not be excused on this account. Mr. Matthews abused his position of trust, and moral turpitude of the kind of which he was guilty

should result in expulsion. His conduct so undermined the public trust and the reputation of the profession that expulsion is the appropriate sanction.

NOTICE

Publication of the decision and order, including Mr. Matthews' name, is, in the opinion of the committee, a general deterrent. 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. For these reasons, the committee ordered that, in addition to the usual forms of notice, notice of this decision and order, disclosing Mr. Matthews' name, be placed in a newspaper in the community where Mr. Matthews resides.

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 SEPTEMBER, 1996
BY ORDER OF THE DISCIPLINE COMMITTEE

P.A. CAMPOL, CA - CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

M. BRIDGE, CA
B.M. BYRNE, CA
S.A. GOODMAN, CA
B.A. YOUNG (public representative)

APPEAL COMMITTEE re JOHN OVERTON MATTHEWS

DECISION AND REASONS IN THE MATTER OF: An appeal by **JOHN OVERTON MATTHEWS**, a suspended member of the Institute, of the decision and order of the discipline committee made on June 17, 1996, pursuant to the bylaws of the Institute, as amended.

DECISION AND REASONS FOR DECISION MADE MARCH 20, 1997

DECISION

This appeal was heard by a panel of the appeal committee of the Institute of Chartered Accountants of Ontario on March 20, 1997. Mr. Matthews sought to vary the penalty imposed by the discipline committee in its decision and order made June 17, 1996.

Ms. D.A. McPhadden appeared on behalf of the professional conduct committee. Mr. John Matthews appeared without counsel, and acknowledged that he had been advised of his right to be represented by counsel.

After reviewing the decision and order and reasons of the discipline committee, and other documents filed, including the transcript of the discipline committee proceeding, and after hearing submissions from Mr. Matthews and Ms. McPhadden, the appeal committee dismissed the appeal and confirmed the decision and order of the discipline committee made on June 17, 1996.

All parties were informed of the appeal committee's decision and were advised that written reasons for its decision would follow.

These are the reasons for the appeal committee's decision.

REASONS FOR DECISION

Mr. Matthews submitted to the appeal committee at the outset of the hearing that he was seeking to vary the penalty imposed by the discipline committee in its decision and order made on June 17, 1996. He was not disputing the facts upon which he had been found guilty by the discipline committee of the charges laid pursuant to Rules of Professional Conduct 201.1 and 205. An agreed statement of facts had been submitted to the discipline committee, and he had pleaded guilty to the charges laid.

Mr. Matthews was seeking to set aside paragraphs 2, 3, 4 and 5 of the discipline committee's order, and to substitute therefor a provision for an extended suspension with severe probation restrictions.

The discipline committee's order was as follows:

1. That Mr. Matthews be reprimanded in writing by the chair of the hearing.
2. That Mr. Matthews be fined the sum of \$3,000, to be remitted to the Institute within twelve months from the date of the Decision and Order becoming final under the bylaws.

3. That Mr. Matthews be expelled from membership in the Institute.
4. That notice of the Decision and Order, disclosing Mr. Matthews' name, be given:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario;
 - (c) to the Canadian Institute of Chartered Accountants; and
 - (d) to a newspaper in the community where Mr. Matthews resides.
5. That Mr. Matthews surrender his certificate of membership in the Institute to the discipline committee secretary within ten days from the date of the Decision and Order becoming final under the bylaws.

The issue was whether or not the discipline committee, after considering the evidence, had properly exercised its discretion and imposed a sanction within an appropriate range of sanctions given the facts of this particular case. Under Bylaw 530(3), the discipline committee has been given wide powers to impose sanctions on a member found in breach of the rules of professional conduct. In exercising its discretion to impose an appropriate sanction under the bylaws, the discipline committee's responsibilities are to act fairly in the application of the principles of sentencing, in a manner consistent with earlier cases. The major reason for making reference to earlier cases is to ensure consistency.

The discipline committee of a professional body is charged with a public responsibility to ensure and maintain high standards of professional ethics and practice. The committee in the proper discharge of its function is best able to assess the gravity of the misconduct and its consequences to the public and the profession. Unless there is error in principle, unless the punishment clearly does not fit the crime, the appeal committee should not disturb the penalty and substitute its judgment for that of the discipline committee.

After listening to the submissions made and reviewing the materials filed, the appeal committee concluded that the discipline committee properly considered and applied the principles of sentencing and imposed a sanction within the range of sanctions appropriate for a breach of Rules 201.1 and 205 of the rules of professional conduct. Accordingly, the appeal committee determined there to be no basis upon which to vary the sanction imposed on Mr. Matthews, and dismissed his appeal in its entirety.

DATED at Toronto, this day of July, 1997.

R.J. NOBES, FCA - CHAIR
THE APPEAL COMMITTEE

MEMBERS OF THE PANEL:

R.J.L. BOWMAN, CA
B.N. GORY, FCA
D.J. HERLICK, CA
R.E. PARISI, CA
E.W. SLAVENS, FCA
J.I. FRID (Public representative)