

John Edward Newman: Summary, as Published in *CheckMark*

John Edward Newman, of Etobicoke, was found guilty of one charge under Rule 203.2 of failing to cooperate in the attempted inspection of his practice, and one charge under Rule 104 of failing to promptly reply to correspondence from the Institute in respect of a matter of professional conduct. The charge under Rule 104 arose out of Mr. Newman's failure to respond to a standards enforcement enquiry about his lack of cooperation with practice inspection. He was fined \$2,000 and ordered to cooperate with practice inspection within a specified time. As a result of his failure to comply with the order, Mr. Newman was expelled from the Institute.

CHARGE(S) LAID re John Edward Newman

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

1. THAT, the said John E. Newman, in or about the period March 10, 1998 to November 17, 1998, 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 E. Newman, in or about the period September 22, 1998 to November 17, 1998, failed to promptly reply in writing to a letter from the Institute in respect of a matter of professional conduct signed by the director of standards enforcement and dated and sent September 22, 1998 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

Dated at Toronto this 17th day of November, 1998.

UWE MANSKI, FCA – DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re John Edward Newman

DECISION AND ORDER IN THE MATTER OF: Charges against **JOHN EDWARD NEWMAN, 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 19, 1999

DECISION

THAT, having seen and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Newman 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 charges Nos. 1 and 2, the Discipline Committee finds John Edward Newman guilty of charges Nos. 1 and 2.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Newman be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Newman be and he is hereby fined the sum of \$2,000, to be remitted to the Institute within seven (7) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Newman cooperate with practice inspection by replying to the letter from the director of practice inspection dated July 28, 1998, within seven (7) days from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Newman'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; and
 - (c) by publication in *CheckMark*.
5. THAT in the event Mr. Newman fails to comply with the requirements of this Order, 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 by publication in *The Globe and Mail*.

DATED AT TORONTO THIS 28TH DAY OF JANUARY, 1999
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re John Edward Newman

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **JOHN EDWARD NEWMAN, 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 19, 1999

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on January 19, 1999 to hear evidence concerning two charges brought against John Edward Newman, CA.

The professional conduct committee was represented by Ms. Deborah McPhadden. Mr. Newman was not present and was not represented by counsel.

The discipline committee reviewed the affidavits of service of the notice of assignment hearing and notice of hearing, which were filed as exhibits. The committee was satisfied that Mr. Newman 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. Newman was not present.

A plea of not guilty was then entered on behalf of Mr. Newman to the following charges laid against him by the professional conduct committee:

1. *THAT, the said John E. Newman, in or about the period March 10, 1998 to November 17, 1998, 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 E. Newman, in or about the period September 22, 1998 to November 17, 1998, failed to promptly reply in writing to a letter from the Institute in respect of a matter of professional conduct signed by the director of standards enforcement and dated and sent September 22, 1998 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.*

In presenting its case, counsel for the professional conduct committee filed as an exhibit a document brief containing various correspondence from the director of practice inspection and the director of standards enforcement, together with a copy of Canada Post's confirmation of receipt of a registered item. No replies have been received from Mr. Newman to the various requests for information from the Institute.

With respect to charge No. 1, the document brief attested that:

- ∃ on March 10, 1998, the director of practice inspection informed Mr. Newman that a practice inspection was to be scheduled, and requested certain information relating to Mr. Newman's practice;

- ⌘ when Mr. Newman failed to respond, the director of practice inspection sent a second request for the information on June 8, 1998, to which Mr. Newman did not respond;
- ⌘ on July 28, 1998, the director of practice inspection sent by registered mail a final request for the information, to which, again, Mr. Newman failed to respond;
- ⌘ Mr Newman also failed to respond to a telephone call made to his office.

With respect to charge No. 2, the document brief attested that:

- ⌘ on September 22, 1998, the director of standards enforcement informed Mr. Newman by registered letter 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. Newman did not respond to the standards enforcement letter.

After considering the evidence, and the submissions made by Ms. McPhadden, the discipline committee, upon deliberation, found Mr. Newman guilty of both charges. The committee then 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. Newman be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Newman be and he is hereby fined the sum of \$2,000, to be remitted to the Institute within seven (7) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Newman cooperate with practice inspection by replying to the letter from the director of practice inspection dated July 28, 1998, within seven (7) days from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Newman'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; and
 - (c) by publication in *CheckMark*.
5. THAT in the event Mr. Newman fails to comply with the requirements of this Order, 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 by publication in *The Globe and Mail*.

A copy of the decision and order has been sent to Mr. Newman. These are the reasons for the sanctions imposed. In considering the appropriate sanction, the committee considered the three general principles of sentencing, namely rehabilitation, general deterrence and specific deterrence. The committee concluded that Mr. Newman was ungovernable, and, accordingly, that rehabilitation did not seem a reasonable objective.

Reprimand

The committee believes that a reprimand in writing from the chair of the hearing will stress to Mr. Newman the unacceptability of his conduct as a chartered accountant.

Fine

The professional conduct committee submitted that a fine should be levied against Mr. Newman in the amount of \$2,000. The discipline committee agreed that 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. Newman. Mr. Newman's failure to cooperate with the professional conduct committee's investigation is completely unacceptable and will not be tolerated.

Cooperation with Practice Inspection

The committee agreed with the submission of counsel for the professional conduct committee that Mr. Newman should be allowed seven (7) days from the date of the decision and order becoming final under the bylaws to cooperate with practice inspection. This was considered an adequate time frame, in view of the time that would elapse between Mr. Newman's receipt of a copy of the decision and order and the date of the decision and order becoming final.

Notice

The giving of notice of the committee's decision and order, disclosing Mr. Newman's name, is, in the opinion of the committee, a general deterrent. It is the discipline committee'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.

Failure to Comply

The committee's order requires Mr. Newman to cooperate with practice inspection within a specified time. He has been given many previous opportunities to cooperate, and this is the last one. Failure to comply with any of the requirements of the order within the prescribed time periods will result in Mr. Newman's immediate expulsion from membership in the Institute.

DATED AT TORONTO, THIS DAY OF APRIL, 1999
BY ORDER OF THE DISCIPLINE COMMITTEE

P. B. A. CLARKSON, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R. I. COWAN, C.A.
S. W. SALTER, C.A.
B. A. TANNENBAUM, C.A.

K. TSE, C.A.

B. W. BOWDEN (Public representative)