

Kenneth Gregory Derry Fitz-Andrews: Summary, as Published in *CheckMark*

Kenneth Gregory Derry Fitz-Andrews, of Mississauga, was found guilty of a charge under Rule 203.2 of failing to cooperate in a professional conduct committee investigation, and a charge under Rule 303.1 of failing to provide reasonable information to a successor accountant. He provided the cooperation and information sought prior to the hearing. Mr. Fitz-Andrews was fined \$3,000.

CHARGE(S) LAID re Kenneth Gregory Derry Fitz-Andrews

The Professional Conduct Committee hereby makes the following charges against Steven Scott Brown, CA, a member of the Institute:

1. THAT, the said Kenneth G.D. Fitz-Andrews, in or about the period January 1996 to September 1996, failed to co-operate with officers, servants or agents of the Institute who were appointed to arrange or conduct an investigation on behalf of the professional conduct committee, contrary to Rule 203.2 of the rules of professional conduct, in that:
 - (a) he failed to produce certain documents requested by the investigator appointed by the professional conduct committee and,
 - (b) he has neglected or refused to produce certain of the documents listed in the Notice dated April 2, 1996 signed by the chair of the professional conduct committee and received by him on or about April 11, 1996.
2. THAT, the said Kenneth G.D. Fitz-Andrews, in or about the period February 1996 to September 1996, having received a written request for information from a successor accountant, Stastny & Co., on behalf of his former clients, 997487 Ontario Limited and Greater Brampton Investment Ltd., he failed to provide reasonable information to the successor accountant about the work being assumed contrary to Rule 303.1 of the rules of professional conduct.

Dated on this 19th day of September, 1996

JENNIFER L. FISHER, CA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Kenneth Gregory Derry Fitz-Andrews

DECISION AND ORDER IN THE MATTER OF: Charges against **KENNETH GREGORY DERRY FITZ-ANDREWS, CA**, a member of the Institute, under **Rules 203.2 and 303.1** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE MAY 21, 1997

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1 and 2, the Discipline Committee finds Kenneth Gregory Derry Fitz-Andrews guilty of charges Nos. 1 and 2.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Fitz-Andrews be reprimanded orally by the chair of the hearing.
2. THAT Mr. Fitz-Andrews be and he is hereby fined the sum of \$3,000, to be remitted to the Institute within ninety (90) days from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Fitz-Andrews= 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*.
4. THAT in the event Mr. Fitz-Andrews fails to comply with the requirement of paragraph 2 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 thirty (30) days from the date of his suspension, and in the event he does not comply within the thirty day 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 in paragraph 3 hereof.

DATED AT TORONTO THIS 9TH DAY OF JUNE, 1997
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Kenneth Gregory Derry Fitz-Andrews

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges
against **KENNETH GREGORY DERRY FITZ-ANDREWS, CA**, a member of the Institute, under
Rules 203.2 and 303.1 of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE MAY 21, 1997

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on May 21, 1997 to hear two charges brought by the professional conduct committee against Kenneth G.D. Fitz-Andrews, C.A.

The first charge against Mr. Fitz-Andrews was that he had failed to cooperate within an investigation carried out on behalf of the professional conduct committee, contrary to Rule 203.2 of the rules of professional conduct.

The second charge was that he failed to provide reasonable information to a former client=s successor accountant about work being assumed, contrary to Rule 303.1 of the rules of professional conduct.

The professional conduct committee was represented by Ms. Deborah McPhadden, and Mr. Fitz-Andrews was represented by Mr. Christopher Goldson. Mr. Fitz-Andrews pleaded guilty to both charges and confirmed for the record that he understood that he could be found guilty of the charges solely on the basis of his plea.

The evidence presented to the discipline committee, by way of an agreed statement of facts and a document brief, established that Mr. Fitz-Andrews failed to cooperate throughout the period from January, 1996 to May, 1997, when, by way of a letter from his counsel, Mr. Goldson, dated May 9, 1997, he indicated his willingness to comply with the notice from the professional conduct committee dated April 2, 1996, as well as the requests referred to in the charges dated September 19, 1996. Mr. Fitz-Andrews also wrote directly to the chair of the professional conduct committee on May 15, 1997, apologizing for his failure to cooperate. It is apparent that it took the prospect of the hearing itself to prompt the required cooperation.

The evidence was also clear that Mr. Fitz-Andrews had failed to provide reasonable information to the successor accountant of one of his clients, in breach of Rule 303.1.

No evidence was presented on behalf of Mr. Fitz-Andrews with respect to the question of guilt other than by way of the agreed statement of facts. In his submissions, Mr. Goldson acknowledged that there had been a failure to cooperate.

The discipline committee found Mr. Fitz-Andrews guilty of the charges, and then heard submissions as to sanction, upon which it deliberated, and made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Fitz-Andrews be reprimanded orally by the chair of the hearing.
2. THAT Mr. Fitz-Andrews be and he is hereby fined the sum of \$3,000, to be remitted to the Institute within ninety (90) days from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Fitz-Andrews' 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*.
4. THAT in the event Mr. Fitz-Andrews fails to comply with the requirement of paragraph 2 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 thirty (30) days from the date of his suspension, and in the event he does not comply within the thirty day 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 in paragraph 3 hereof.

The discipline committee is well aware that it should consider the three principles of rehabilitation, specific deterrence and general deterrence when imposing a sanction. We are also aware that the sanction should fit the misconduct, and that one way of attempting to ensure it does is to keep in mind sanctions which have been imposed in similar cases in the past.

In this case, Ms. McPhadden, on behalf of the professional conduct committee, requested a written reprimand, a fine in the amount of \$3,000, and notice of the Order disclosing Mr. Fitz-Andrews' name in *CheckMark*, as well as to the CICA and to the Public Accountants Council.

Mr. Goldson submitted that a fine in the range of \$1,000 to \$1,500 was appropriate, citing a previous discipline committee decision. He also submitted that notice without disclosing Mr. Fitz-Andrews' name would act as a sufficient general deterrent to other Institute members.

Fine

The panel concluded that in this case a fine of \$3,000 would be appropriate to act as both a specific deterrent to Mr. Fitz-Andrews and a general deterrent to stress to like-minded members that lack of cooperation will not be tolerated by the Institute.

Notice

Only in rare and unusual circumstances has the discipline committee not ordered the giving of notice including disclosure of the member's name. No such circumstances were submitted by the member in this case. The committee felt that publication of the member's name will act as a general deterrent to the membership. It was considered important that a message be sent to all members that the requirement for cooperation with the Institute must be taken seriously. In particular, the committee considered it important to stress that a notice from the professional conduct committee requiring the production of documents relevant to an investigation warrants a prompt response.

Reprimand

There is no doubt that Mr. Fitz-Andrews' conduct deserves a reprimand. He did not just fail to cooperate, he refused to acknowledge that the professional conduct committee had any right to the documents and cooperation requested. While he now recognizes that he was wrong, the discipline committee is of the view in this case that an oral reprimand would act as a specific deterrent to the member, to stress to him that his behaviour relating to these charges constitutes an unacceptable departure from the rules of professional conduct. Also applying the principle of rehabilitation, the panel, based on Mr. Fitz-Andrews' attitude at the hearing, concluded that his willingness to be governed was not in issue at this time. Nevertheless, as the reasons he gave for his refusal to cooperate over the fifteen month period were without merit, the committee determined that the following reprimand would serve to reinforce for Mr. Fitz-Andrews his obligation to adhere to the standards of the profession. Mr. Fitz-Andrews was reprimanded as follows:

It is essential that you cooperate in the future, and we mean the immediate future. Your breach of the rules has resulted in a delay of over one year in the investigation of the complaints, which on the face of them, based on the evidence, are serious complaints.

The profession and the public have an interest in the timely investigation of complaints. Your refusal to cooperate is not a private matter between you and the complainants.

Chartered accountants have a duty to their clients, the profession and the public to adhere to appropriate standards. Mr. Fitz-Andrews, your failure to cooperate has prevented the professional conduct committee from examining whether or not any standards have been breached.

You have told us you regret your actions and that you will cooperate in the future. We expect that you will. We do not want any repetition of these charges you face today. We are uncomfortable with the fact that, because of the lateness of the submission of your documents, we are unable to conclude whether all the required information has been or will be supplied in a satisfactory form to the professional conduct committee.

In the event you do not cooperate and are charged again with failure to cooperate, in the event of a conviction we expect a transcript of this reprimand will be put before the discipline committee when it considers the appropriate sanctions.

Mr. Fitz-Andrews, we do not want to see you here again for failure to cooperate. Your actions, as stated before, are not appropriate for a professional organization, and we consider this a very, very serious matter.

This hearing is concluded.

DATED AT TORONTO THIS DAY OF JULY, 1997
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

R.I. COWAN, CA

B.L. HAYES, CA

B.L. STEPHENS, CA

B.A. YOUNG (Public representative)