

Lawrence Byron Peebles: Summary, as Published in *CheckMark*

Lawrence Byron Peebles, of Toronto, was found guilty of a charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest. While a company shareholder and vice-president finance, he used his corporate credit card to incur personal expenditures totaling at least \$54,000. These expenditures were paid by the company as part of Mr. Peebles' income. He did not declare any of this amount as income, however, and thereby avoided the payment of personal income tax which was properly payable. Mr. Peebles was fined \$3,000 and suspended from membership for six months.

Mr. Peebles returned to MEMBERSHIP IN GOOD STANDING on April 30, 1997.

CHARGE(S) LAID re Lawrence Byron Peebles

The Professional Conduct Committee hereby makes the following charges against Lawrence B. Peebles, CA, a member of the Institute:

1. THAT, the said Lawrence B. Peebles, in or about the period May 1990 through March 1992, failed to maintain the good reputation of the profession and its ability to serve the public interest in that, while a shareholder and Vice-President Finance of Stormont Chemicals Limited, he borrowed approximately \$43,840 from the company on agreement with Vadym Korsh, the President of the company and majority shareholder, that he would pay back the entire amount within four months and paid back only \$12,140 without advising the said Vadym Korsh thereby securing to himself a benefit to which he was not entitled contrary to Rule 201.1 of the rules of professional conduct.
2. THAT, the said Lawrence B. Peebles, in or about the period July 1988 through May 1992, 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 a shareholder and Vice-President Finance of Stormont Chemicals Limited he used his corporate credit card to incur personal expenditures totaling approximately \$80,000 which were paid by the company and formed a part of his income and he did not declare any of this amount as income, thereby avoiding the payment of personal income tax properly payable, contrary to Rule 201.1 of the rules of professional conduct.

Dated at Belleville this day of 1996.

JENNIFER L. FISHER, CA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Lawrence Byron Peebles

DECISION AND ORDER IN THE MATTER OF: Charges against **LAWRENCE BYRON PEEBLES, 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 11, 1996

DECISION

THAT, having seen, heard and considered the evidence, and having heard the plea of guilty to charge No. 2, charge No. 3 having been withdrawn, the Discipline Committee finds Lawrence Byron Peebles not guilty of charge No. 1, and guilty of charge No. 2.

ORDER

IT IS ORDERED in respect of charge No. 2:

1. THAT Mr. Peebles be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Peebles be and he is hereby fined the sum of \$3,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Peebles be suspended from the rights and privileges of membership in the Institute for a period of six (6) months from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Peebles 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; and
 - (c) to the Canadian Institute of Chartered Accountants.
5. THAT Mr. Peebles 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, to be held by the secretary during the period of suspension and thereafter returned to Mr. Peebles.

6. THAT in the event Mr. Peebles 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 six (6) months from the date of his suspension, and in the event he does not comply within the six 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 in paragraph 4 hereof.

DATED AT TORONTO THIS 21st DAY OF JUNE, 1996
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Lawrence Byron Peebles

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **LAWRENCE BYRON PEEBLES, 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 11, 1996

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario convened on April 15, 16 and June 11, 1996 to hear charges brought by the professional conduct committee against Mr. Lawrence B. Peebles, CA.

The professional conduct committee was represented by Mr. P.F. Farley. Counsel for Mr. Peebles was Mr. P.R. Jervis.

Originally, there were three charges of professional misconduct but, at the commencement of the hearing, counsel for the professional conduct committee asked that charge No. 3 be withdrawn. Mr. Peebles made no objection and accordingly the charge was withdrawn. Both remaining charges against Mr. Peebles were that he had failed to maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the rules of professional conduct.

Mr. Peebles pleaded not guilty to charge No. 1 and guilty to charge No. 2. He confirmed for the record that he understood that he could be found guilty of charge No. 2 solely on the basis of his plea.

Counsel for the professional conduct committee filed a document brief and called three witnesses: the investigator, Mr. John Douglas, CA; the individual who had been the bookkeeper at Stormont Chemicals, Ms. L. Kim Blanchard; and Mr. Peebles' partner at Stormont, Mr. Vadym Korsh. Mr. Jervis, on behalf of the member, also called three witnesses: Mr. Peebles; his wife, Ms. Martha Turner; and Dr. John W. McCormick, a psychiatrist.

At the conclusion of the evidence and the submissions, the panel deliberated and found Mr. Peebles not guilty of charge No. 1 and guilty of charge No. 2.

After providing an opportunity for both counsel to call evidence and make submissions with regard to sanction, the panel deliberated and made its order. The determination and sanction imposed were made known at the hearing. These are the reasons for the decision and order that has already been sent to the parties.

DECISION ON THE CHARGES

Background

During the period July 1988 to April 1992, Mr. Peebles was a shareholder in, and Vice-President of Finance of, Stormont Chemicals Limited. Initially, he owned 1/3 of the company, in which he invested \$100,000. Mr. Vadym Korsh invested \$200,000 and owned 2/3 of the company. These investments were credited in Stormonts books as shareholder advances (Accounts

#2050 and #2051). In 1990, Mr. Michael Besania became the owner of 10% of the company, so that Mr. Peebles ownership was reduced to 30% and Mr. Korshs to 60%.

Mr. Peebles was responsible for the financial management of Stormont. He was assisted by a bookkeeper, Ms. Blanchard, who reported to him and did the day-to-day accounting. Mr. Peebles also assumed responsibility for such things as the company's compliance with dangerous goods legislation and other similar general management activities.

The company grew quickly and expanded, against Mr. Peebles wishes, into England. The panel heard that the English venture ended badly and that Mr. Peebles was under a great deal of stress because of this and the start-up nature of Stormont in Canada.

Charge 1

The charge was that Mr. Peebles, while a shareholder and Vice-President of Stormont, had created or acquiesced in the creation of a journal entry in the company's records, and that this was done for his personal benefit. The relevant facts are set out in the following paragraphs.

In May 1990, Mr. Peebles borrowed some \$44,000 from Stormont in order to purchase a sailboat from Griffin Yachts. Mr. Korsh, the only other partner in the company at the time, was aware of the loan and co-signed a cheque in the amount of \$39,940 to Griffin. Mr. Peebles and Mr. Korsh agreed that it was, in fact, a loan although a specific schedule for repayment was not made. The loan was recorded on Stormonts books as a debit to account #1039 Advances to Employees in May 1990.

Also in May 1990, a journal entry was made in Stormonts books that credited account #1039 with \$32,508.04, and debited a number of accounts, including sales rebate accounts, miscellaneous income, capital gains, discounts granted, and advances to L. Peebles.

Mr. Korsh testified that his role in the company was sales and marketing and that he did not have any financial expertise. Mr. Peebles corroborated Mr. Korshs evidence about his role and his lack of financial knowledge. Mr. Korsh also testified that he had not instructed Ms. Blanchard at any time to make the journal entry in question.

Ms. Blanchard testified that she was responsible for the day-to-day bookkeeping of Stormont and that, since she made most of the entries to the accounting records of the company, she had probably entered the journal entry in question. However, Ms. Blanchard also said, at various times, that:

- she had not made the entry in question;
- she had no recollection about who made the entry or when it was made;
- she had no recollection of receiving instructions from Mr. Peebles with regard to the entry;
- she would have been acting under instructions from Mr. Peebles or Mr. Korsh in making the journal entry in question; and
- she did make journal entries, from time to time, without instruction and based on her own judgment.

Mr. Peebles testified that he did not:

- make the journal entry in question;
- instruct anyone to make that journal entry; or
- have any discussion with Ms. Blanchard about the entry.

Mr. Peebles said that, after discussions with the TD Bank in the spring of 1990 and after he had discussed the results of those meetings with Mr. Korsh, he had asked Ms. Blanchard to net any advances to him against his shareholder account. Mr. Peebles did not, however, review the general ledger entries to determine whether she had done that or had done it properly. When the professional conduct committee began its investigation, Mr. Peebles, who did not have access to the corporate records, gave various explanations to the Institute and its agents to indicate that the loan had been repaid.

Mr. Peebles testified that he understood originally that he would have to bring his shareholder advance account back to its original \$100,000 balance. However, when he left the company, he had not done so. Nor had he made any attempt to ascertain exactly what the balance in his shareholder advance account was. Sometime later, lawyers were retained by both Mr. Peebles and Mr. Korsh, but the shareholders dispute was not resolved.

According to a letter from Dr. Leibow, Mr. Peebles psychiatrist from 1984 to 1993, and testimony given by Dr. McCormick, Mr. Peebles current psychiatrist, Mr. Peebles had been diagnosed as having a severe clinical depression. According to Dr. McCormick, the symptoms of this illness include loss of concentration, withdrawal from family and other situations that require interaction with other people, procrastination, loss of attention to detail, and withdrawal from any perceived challenges to routine. Dr. McCormick also stated that the depressive illness was likely to be recurrent and that stress would aggravate it.

Charge 2

Charge 2 was that, throughout the period July 1988 to May 1992, Mr. Peebles charged to the corporate credit card approximately \$80,000 of personal expenses, which formed part of his income. He did not, however, declare any of this amount as income on his tax returns for the periods to Revenue Canada, thereby avoiding the payment of personal income tax at that time. The facts are outlined in the following paragraphs.

Mr. Peebles annual salary, while at Stormont, was approximately \$40,000. Consequently, he and Mr. Korsh agreed that they would both charge some personal expenses to the company. According to Mr. Peebles analysis of the financial data, approximately \$54,000 of personal expenses was charged by him to the corporate credit card during the period 1988 to 1992. This taxable benefit was not reported by him to Revenue Canada until December 1995, so that no personal income tax was paid thereon during the period in which the benefit was received.

The parties did not make an issue of the difference between the approximately \$80,000 stipulated in charge No. 2 and the \$54,000 based on Mr. Peebles analysis. Mr. Peebles agreed that not declaring income of approximately \$54,000 was a breach of the rules as charged.

Conclusion

The discipline committee understands that the standard of proof in cases prosecuted before it requires the professional conduct committee to prove the allegations made on a balance of probabilities and not beyond a reasonable doubt. But, as the consequence to the member is a determination of professional misconduct, there must be clear and cogent evidence of the facts alleged before that standard of proof will be satisfied. In essence, with respect to charge No. 1, the issue that the panel had to decide was whether or not there was cogent evidence that Mr. Peebles had instigated or created the journal entry, or knew about it and left it uncorrected to mislead the reader, principally Mr. Korsh.

The panel reviewed the document brief and the exhibits filed, and listened to the testimony given. In reaching its conclusion, the panel was conscious that it appeared that only Mr. Peebles could have benefited from the creation of the journal entry in question, and that it would be a careless chartered accountant who, responsible for the books and records of a business, would leave this entry as it was and not correct it. If he did not know of the existence of the inaccurate journal entry, he should have.

However, the evidence with respect to this was:

- Mr. Peebles said he did not make the entry or give instructions that the entry be made, and that he did not know that it had been made.
- Mr. Korsh said he did not make the entry or give instructions to make it, but he could not say that Mr. Peebles had given those instructions because he did not know.
- Ms. Blanchard's evidence was so equivocal that the panel was not able to put any weight on it.
- Dr. McCormick's testimony indicated that Mr. Peebles' lack of attention to detail and withdrawal from acceptance of his responsibilities were consistent with his medically recognized illness.

The panel concluded that the evidence did not support a finding of guilt, and determined that Mr. Peebles was not guilty of charge No. 1. However, the panel understood why the professional conduct committee had laid the charge, since Mr. Peebles, as the person with ultimate responsibility for Stormonts books and records, should have known about the inaccurate entry and caused it to be corrected.

Having heard Mr. Peebles guilty plea to charge No. 2 and reviewed the document brief, which established the facts set out above, the panel determined that Mr. Peebles was guilty of this charge.

SANCTIONS ORDER

With regard to the finding of guilt on charge No. 2, the panel heard submissions on sanction by Mr. Farley and Mr. Jervis and testimony from Mr. Renton on Mr. Peebles behalf. The panel then deliberated and found that Mr. Peebles should:

- receive a written reprimand from the chair of the panel;

- be fined \$3,000, to be remitted within six months from the date of the decision and order becoming final under the bylaws; and
- be suspended from the rights and privileges of membership in the Institute for a period of six months.

In addition, the panel ordered that notice of its decision and order, along with Mr. Peebles name, be published in *CheckMark* and given to the Public Accountants Council for the Province of Ontario and the Canadian Institute of Chartered Accountants.

The panel also determined that, should Mr. Peebles fail to remit the \$3,000 fine to the Institute within six months, he should be suspended until the remittance is made, provided it is made within a further six months. If the fine is not paid by the end of that six months, Mr. Peebles should be expelled from membership in the Institute and notice of his expulsion given in the manner outlined in the preceding paragraph.

In reaching its decision on the appropriate sanctions, the panel considered the principles of rehabilitation, specific deterrence and general deterrence. In applying those principles to the facts of this case, the most relevant facts were:

Dr. McCormick's testimony that Mr. Peebles depression has ameliorated since his departure from Stormont and employment in a much more structured environment, similar to that in which he had worked before joining Stormont, making specific deterrence of lesser consequence; and

Mr. Peebles

- pleaded guilty to charge No. 2;
- cooperated with the Institute in its investigation, although somewhat confusingly and without the due care and attention that he should have given to the matter;
- apparently functioned in a manner that was competent, ethical and conscientious during the period prior to his becoming partners with Mr. Korsh; and
- is considered to act with integrity and fairness, and to be thorough, professional and well respected by those with whom he is in contact since leaving Stormont.

The panel did not agree with the submission by counsel for the professional conduct committee that a fine in the amount of \$5,000 was appropriate in this case. However, neither did it agree with Mr. Peebles counsel that a fine of \$500 - \$1,000 was appropriate. Mr. Peebles has now refilled his tax return and this case is not one in which a chartered accountant has been convicted of a criminal offence with respect to his or a clients income taxes. Nevertheless, failure by a chartered accountant to adhere to Canada's income tax laws and regulations is not a matter that the profession condones, or wishes to be perceived as condoning.

Mr. Peebles counsel also submitted that the panel ought not to order the publication of its decision and order in this case, on the grounds that:

- there are many mitigating circumstances, which he enumerated;

- this is not a situation in which there is morale turpitude; and
- there is concern that Mr. Peebles former partner may use the publication, which would include Mr. Peebles name, in some way that is injurious to Mr. Peebles.

The panel concluded, however, that the principle of general deterrence required both the sanction imposed and publication of the discipline committee's decision. The general public and other chartered accountants should be informed that a chartered accountant must take his responsibilities seriously, and that while a pre-existing illness and the other mitigating factors may make Mr. Peebles conduct understandable, they cannot be considered to make breaking the rules of professional conduct excusable.

DATED AT TORONTO, THIS DAY OF SEPTEMBER, 1996
BY ORDER OF THE DISCIPLINE COMMITTEE

F.A. DROZD, FCA - CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

L.P. BOOKMAN, CA
C.J. BURKE, FCA
J.J. LONG, CA
B.L. STEPHENS, CA
V.G. STAFL (Public representative)