

Lisa Ann Bailey: Summary as Published in *CheckMark*

Lisa Ann Bailey, of Perth, was found guilty of a charge under Rule 203.2 of failing to cooperate in a professional conduct committee investigation. Her refusal to cooperate was based upon the advice of her legal counsel, who was concerned about the potential use against her in later criminal proceedings of communications between her and the professional conduct committee. She was fined \$1,500 and ordered to cooperate with the professional conduct committee within a specified period of time, failing which she would be expelled. Ms. Bailey has complied with the order.

CHARGE(S) LAID re Lisa Ann Bailey

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

1. THAT, the said Lisa A. Bailey, in or about the period September 1996 to September 16, 1997, failed to co-operate with officers, servants or agents of the Institute 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.

Dated at Toronto this 16th day of September 1997.

E.M. REITEROWSKI, CA
ACTING AND DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Lisa Ann Bailey

DECISION AND ORDER IN THE MATTER OF: A charge against **LISA ANN BAILEY, CA**, a member of the Institute, under **Rule 203.2** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE FEBRUARY 26, 1998

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to the charge, the Discipline Committee finds Lisa Ann Bailey guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Ms. Bailey be reprimanded in writing by the chair of the hearing.
2. THAT Ms. Bailey be and she is hereby fined the sum of \$1,500, to be remitted to the Institute within ninety (90) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Ms. Bailey cooperate with the investigator appointed by the professional conduct committee within fourteen (14) days of the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Ms. Bailey'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 Ms. Bailey fails to comply with the requirements of this Order within the time periods specified, she shall thereupon be expelled from membership in the Institute, and notice of her expulsion, disclosing her name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Ms. Bailey's practice.

DATED AT TORONTO THIS 5TH DAY OF MARCH, 1998
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re LISA ANN BAILEY

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: A charge against **LISA ANN BAILEY, CA**, a member of the Institute, under **Rule 203.2** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE FEBRUARY 26, 1998

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on February 26, 1998 to hear a charge brought by the professional conduct committee against Lisa Ann Bailey, CA. Ms. Bailey was charged with failing to cooperate with the Institute, which was trying to conduct an investigation into her professional conduct. Ms. Bailey pleaded guilty to the charge, and stated that she understood that she could be found guilty solely on the basis of her plea.

The professional conduct committee was represented by Mr. Paul F. Farley. Ms. Bailey was represented by Mr. Alan D. Gold. No witnesses were called by either Mr. Farley or Mr. Gold. An agreed statement of facts and a document brief were filed as exhibits.

The determination and sanctions 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 CHARGE

Agreed Facts

In June 1996, the Institute became aware that Ms. Bailey had been named in 31 charges laid under the Criminal Code of Canada. The charges alleged theft, fraud and falsification of documents. The Institute notified Ms. Bailey on June 26, 1996 that an investigator had been appointed by the professional conduct committee to assist it in gathering further information. When the investigator spoke with Ms. Bailey, in August 1996, to arrange an appointment, she referred him to her lawyer, Mr. Gold. In spite of continuing dialogue between counsel for the professional conduct committee, the investigator, Mr. Gold and Ms. Bailey, the member had not, as of the date of the hearing, provided the professional conduct committee or its investigator with the information it sought.

Conclusion

The evidence corroborated Ms. Bailey's guilty plea to the charge laid by the professional conduct committee. Accordingly, the panel found Ms. Bailey guilty of failing to cooperate with the Institute, contrary to Rule 203.2 of the rules of professional conduct.

ORDER AS TO SANCTION

The sanctions requested by the professional conduct committee were :

- a letter of reprimand;
- a fine of \$1,500;
- an order for Ms. Bailey's cooperation within 14 days, failing which she would be expelled from the profession; and
- full publicity of the discipline committee's decision and order.

Mr. Farley pointed out that, although Ms. Bailey's counsel cited the Canadian Charter of Rights and Freedoms as the reason for her refusal to cooperate, the Charter does not currently exempt a member of a self-regulating profession from cooperating with his or her governing body.

Mr. Gold submitted that, while he, on behalf of Ms. Bailey, was in general agreement with the sanctions requested, he did not believe that Ms. Bailey's actions warranted a fine, and would like any publicity to be postponed until after the completion of the criminal trial, estimated as five months from the date of the hearing.

Mr. Gold also pointed out that Ms. Bailey's failure to cooperate arose from his advice to her on the issue of whether any communication between her and the Institute was privileged, and therefore unable to be used by the prosecution in the criminal trial. He indicated that a letter from the Institute dated February 25, 1998 had alleviated his concerns in this regard, and that Ms. Bailey was now willing to provide the Institute with any information that it requested.

Conclusion

In reaching its conclusions, the panel considered the principles of general deterrence, specific deterrence and rehabilitation.

The panel decided that a letter of reprimand to Ms. Bailey would stress the unacceptability of her actions. The chartered accountancy profession has the serious responsibility of self-regulation, and there are no exceptions to the rule that members of the profession must cooperate, on a timely basis, when asked to participate in regulatory processes. The panel considers the letter to be a specific deterrent, and ordered that such a letter be prepared by the chair of the panel and sent to Ms. Bailey.

The panel did not agree with Mr. Gold that Ms. Bailey's actions were not wilful, albeit undertaken on the advice of her counsel. There was no evidence presented that supported the assertion that cooperation might have had significant consequences later. In fact, Mr. Farley's submissions, and the clarifying questions of this committee's counsel, Mr. Peck, made it clear that a Charter rights argument could be raised during the criminal proceeding, but did not belong before this tribunal.

Having reviewed the document brief, and the letter from the Institute to Mr. Gold dated February 25, 1998, the panel concluded that what had occurred was a series of stalling tactics, used from June 1996 to February 1998 to delay Ms. Bailey's responsibilities as a chartered accountant. The panel concluded, however, that some comfort related to protection of the public was to be found in Ms. Bailey's assertion that she had informed her existing clients of the pending criminal matter, and that all new clients were informed before she was engaged.

Consequently, the panel determined that a fine in the amount of \$1,500 was appropriate, and ordered that Ms. Bailey remit this amount to the Institute within 90 days of the date on which this decision and order becomes final.

Having heard Ms. Bailey's counsel assert that Ms. Bailey could, and would, now cooperate with the Institute's investigation, the panel determined that it was appropriate to ensure this cooperation by setting a time frame within which it is to take place, and a sanction in the event it does not occur within the specified time frame. Given the period of time that has elapsed since cooperation was first requested, and given that there is nothing to inhibit Ms. Bailey's cooperation before this decision and order becomes final, the panel concluded that she should be ordered to cooperate within 14 days of the decision and order becoming final. Failure to cooperate within the specified 14 days will result in Ms. Bailey's expulsion from membership in the profession. This sanction, in the opinion of the panel, is not only an opportunity for Ms. Bailey to rehabilitate herself, but also serves as a specific and general deterrent.

The principle of general deterrence is also served by publication of the discipline committee's decision and order. The panel believes that it is obligated to inform other chartered accountants and the public that there are consequences to actions such as those of Ms. Bailey. The panel therefore ordered the usual notice of the discipline committee's decision and order, disclosing Ms. Bailey's name, to the CICA and the Public Accountants Council, and by way of publication in *CheckMark*. In the event Ms. Bailey does not comply with the order to cooperate or pay the fine levied, the panel ordered that notice of her resulting expulsion be placed in a newspaper distributed in the geographic area of Ms. Bailey's practice.

DATED AT TORONTO THIS DAY OF APRIL, 1998
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL

M. BRIDGE, CA
R.I. COWAN, CA
B.L. HAYES, CA
J.M. MULHALL, CA
B.A. YOUNG (Public representative)