

Mark Edward O'Reilly: Summary, as Published in *CheckMark*

Mark Edward O'Reilly, of Etobicoke, 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 101 of failing to comply with a direction from the chair of the professional conduct committee made pursuant to the bylaws. Over a period of more than a year, Mr. O'Reilly failed to produce documents required for an investigation. When ordered by the chair of the professional conduct committee to produce the document by a specified date, he failed to do so. After being charged, but prior to the hearing, Mr. O'Reilly did cooperate in the investigation. He was reprimanded and fined \$3,500.

CHARGE(S) LAID re Mark Edward O'Reilly

The Professional Conduct Committee hereby makes the following charges against Mark E. O'Reilly, CA, a member of the Institute:

1. That, the said Mark E. O'Reilly, in or about the period June 1, 1995 through to July 11, 1996, failed to cooperate 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.
2. THAT, the said Mark E. O'Reilly, in or about the period April 2, 1996 through to July 11, 1996, failed to comply with a verbal direction given to him by the chair of the professional conduct committee on April 2, 1996, to produce, on or before April 30, 1996, to Mr. Michael Minnes, an investigator appointed by committee:
 - i) all banking records, including bank statements and cancelled cheques, pertaining to his bank account that received the deposit of a cheque from Carolyn Seaquist in the amount of \$4,987.50 from the date the cheque was received in November 1993 until the end of March, 1995 or, in the alternative, an authorization and direction to the bank to release this information;and did thereby fail to comply with the requirements of Bylaw 510(7), contrary to Rule 101 of the rules of professional conduct.

Dated at Toronto this 11th day of July, 1996

NICK HODSON, CA –CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Mark Edward O'Reilly

DECISION AND ORDER IN THE MATTER OF: Charges against **MARK EDWARD O'REILLY, CA**, a member of the Institute, under **Rules 101 and 203.2** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE DECEMBER 11, 1996

DECISION

THAT, having seen and considered the evidence, the Discipline Committee finds Mark Edward O'Reilly guilty of Charge Nos. 1 and 2.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. O'Reilly be reprimanded in writing by the chair of the hearing.
2. THAT Mr. O'Reilly be and he is hereby fined the sum of \$3,500, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. O'Reilly'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*.
4. THAT in the event Mr. O'Reilly 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 three (3) months from the date of his suspension, and in the event he does not comply within the three 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 3 hereof.

DATED AT TORONTO THIS 13TH DAY OF DECEMBER, 1996
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Mark Edward O'Reilly

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **MARK EDWARD O'REILLY, CA**, a member of the Institute, under **Rules 101 and 203.2** of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE DECEMBER 11, 1996

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on December 11, 1996 to hear two charges brought by the professional conduct committee against Mr. Mark Edward O'Reilly, CA.

The first charge against Mr. O'Reilly was that he had failed to cooperate with 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 had failed to comply with a verbal direction given to him by the chair of the professional conduct committee pursuant to Bylaw 510(7), thereby contravening Rule 101 of the rules of professional conduct.

Mr. O'Reilly pleaded guilty to both charges. He confirmed for the record that he understood that he could be found guilty of the charges solely on the basis of his plea.

The professional conduct committee was represented by Mr. P.F. Farley. Mr. O'Reilly was represented Mr. F.E.P. Bowman.

The determination and sanctions imposed were made known at the hearing. These are the written reasons for the decision and order that has already been sent to the parties.

DECISION ON THE CHARGES

Undisputed Facts

A document brief and an agreed statement of facts were filed.

On or about June 2, 1995, the professional conduct committee retained Mr. M. Minnes to investigate a complaint made against Mr. O'Reilly by Ms. C. Seaquist. Among other things, Ms. Seaquist said that she had requested Mr. O'Reilly to make an investment on her behalf and in her name. Ms. Seaquist said that she had given Mr. O'Reilly the funds to pay for the investment, but that the stock in question was not transferred to her on a timely basis.

Mr. Minnes met with Mr. O'Reilly twice before July 11, 1995, and spoke to, left messages for, or wrote to him subsequently, seeking the necessary information and documents to complete his investigation. However, Mr. Minnes and Mr. O'Reilly did not meet again until March 21, 1996, by which time Ms. Seaquist, by means of a letter dated March 13, 1996, had withdrawn her complaint.

Despite the withdrawal, the professional conduct committee concluded that Mr. O'Reilly's actions in this matter should continue to be investigated, and Mr. Minnes continued to request the material that he required.

Charge 1

The “failure to cooperate” charge results from the fact that, although requests were made from June 1995 to July 1996, either orally or in writing, for the information that Mr. Minnes needed to carry out his investigation, he was not provided with more than a fraction of the documents. Subsequent to the service of the charges on Mr. O’Reilly but prior to the hearing, the required information was produced or arrangements for its future production were made. As a result, the agreed statement of facts notes that, as of December 6, 1996, the professional conduct committee was satisfied that Mr. O’Reilly was, at that time, cooperating with the investigation.

Charge 2

As a result of Mr. O’Reilly’s continuing non-cooperation, he was requested to appear before the professional conduct committee on April 2, 1996. At that time the chair of the professional conduct committee ordered Mr. O’Reilly to produce the material that Mr. Minnes required by April 30, 1996. Although Mr. O’Reilly committed to providing at least those documents that were in his possession by the agreed date, he did not do so.

Conclusion

In reaching its conclusion, the panel noted that:

- X although the original complaint had been withdrawn, the professional conduct committee had concluded that the allegations made were serious and had to be fully investigated;
- X the professional conduct committee gave Mr. O’Reilly every possible opportunity to cooperate with its investigation, even to the extent of having him appear before it; and
- X Mr. O’Reilly produced some of the required material over an extended period of time but was, apparently, unwilling to cooperate fully until charges were laid and he consulted legal counsel.

As the evidence presented substantiated the guilty plea, the panel determined that Mr. O’Reilly was guilty of the charges.

SANCTIONS ORDER

After providing an opportunity for Mr. Farley and Mr. Bowman to call evidence and make submissions with regard to sanction, the panel deliberated and made its order. Neither suspension of the member’s privileges nor his expulsion from the profession was sought by the professional conduct committee. The nature of the charges would not warrant suspension or expulsion unless Mr. O’Reilly appeared to be ungovernable. The professional conduct committee did not contend that Mr. O’Reilly is ungovernable. The panel, based on Mr. O’Reilly’s apparent attitude at the hearing, concluded that his willingness to be governed was not an issue.

In applying the principles of rehabilitation, specific deterrence and general deterrence to the facts of this case, the panel concluded that:

- X the length of time from the original request by the professional conduct committee for an investigation to the date at which charges were laid resulted solely from the actions of Mr. O'Reilly;
- X the charges were not made lightly or without due care by the professional conduct committee, which made every attempt to conclude this matter without referring Mr. O'Reilly to the discipline committee;
- X if Mr. O'Reilly was not, as stated by his counsel, wilfully ignoring the professional conduct committee process, which is fundamental to the Institute's fulfilment of its responsibility for protecting the public, he was, at best, displaying an ignorance of it that is incomprehensible in an individual who is a member of the CA profession;
- X Mr. O'Reilly's failure to recognize his own professional responsibilities, both to a member of the public and to the governing body of his profession, is disturbing;
- X although Mr. O'Reilly was not informed of the fact that non-compliance with requests from the governing body of his profession could result in charges of professional misconduct, he should have been aware that this was the case;
- X compliance after charges have been laid, while better than no compliance at all, can best be termed reluctant acquiescence and does not meet the standards of professional conduct.

The giving of a reprimand, as a specific deterrent, and the giving of notice of the committee's decision and order, disclosing the member's name, including by way of publication in *Checkmark*, as both a general and a specific deterrent, were submitted by both counsel as being appropriate. The panel agreed with the submissions, and therefore included these provisions in its order.

Both counsel focussed their submissions on the amount of the fine. Counsel for the professional conduct committee submitted that a fine in the amount of \$3,000 to \$5,000 was appropriate in this case. Mr. O'Reilly's counsel argued that a fine of \$1,000 to \$1,500 was appropriate, because:

- X there was substantial precedent for levying a fine in this range in cases of non-cooperation with practice inspection requests;
- X Mr. O'Reilly had erroneously believed that it was not necessary to provide the information requested after the withdrawal of the original complaint; and
- X there had been at least partial compliance.

The panel concluded, however, that there is a significant difference between a failure to co-operate with a practice inspection and Mr. O'Reilly's refusal to:

- X cooperate with the specific investigation by the professional conduct committee into his conduct; and

X follow the explicit direction given to him by the chair of the professional conduct committee at a meeting of that committee.

Accordingly, the panel ordered a fine in the amount of \$3,500.

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

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

MEMBERS OF THE PANEL:

E.R. ARCHIBALD, CA
B.L. HAYES, CA
S.W. SALTER, CA
W.L. WOOD, CA
B.W. BOWDEN (Public representative)