

Marshall Bryan Sone: Summary, as Published in *CheckMark*

Marshall Bryan Sone, of North York, 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, arising out of his criminal conviction for fraud. While a trustee in bankruptcy of monies for the benefit of creditors of the bankruptcy estates administered by him, Mr. Sone, with intent to defraud and in contravention of his trust, converted monies to a use not authorized by the trust, contrary to the Criminal Code. He was fined \$15,000 and expelled from the Institute. Mr. Sone's appeal of the discipline committee's decision and order was dismissed by the appeal committee.

CHARGE(S) LAID re Marshall Bryan Sone

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

- 1 THAT, the said Marshall Sone, on or about May 25, 1998, failed to conduct himself in a manner which will 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, in that he was convicted by the Ontario Court (General Division) of a criminal offense, namely that during the period from and including the 1st day of March in the year 1989 to and including the 30th day of November in the year 1993, at the Municipality of Metropolitan Toronto, and elsewhere in the Province of Ontario, being a trustee of monies for the benefit of the creditors of the bankruptcy estates administered by Marshall Sone Receiver and Trustee Limited, with intent to defraud and in contravention of his trust, did convert monies, to a use that was not authorized by the trust, contrary to the Criminal Cods.

Dated at Toronto this 28th day of July, 1998.

DOUGLAS A. BOUFFORD, CA – CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Marshall Bryan Sone

DECISION AND ORDER IN THE MATTER OF: A charge against **MARSHALL BRYAN SONE, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE NOVEMBER 11, 1998

DECISION

THAT, having seen and considered the evidence, and having heard the plea of guilty to the charge, the Discipline Committee finds Marshall Bryan Sone guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Sone be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Sone be and he is hereby fined the sum of \$15,000, to be remitted to the Institute within four (4) years from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Sone be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Sone'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;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in *The Globe and Mail*.
5. THAT Mr. Sone 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.

DATED AT TORONTO THIS 13TH DAY OF NOVEMBER, 1998
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Marshall Bryan Sone

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: A charge against **MARSHALL BRYAN SONE, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE NOVEMBER 11, 1998

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on November 11, 1998.

Ms. Deborah McPhadden attended on behalf of the professional conduct committee, and Mr. Sone was represented by Mr. Brian Greenspan.

DECISION ON THE CHARGE

The charge under Rule 201.1 of the rules of professional conduct laid against Mr. Sone reads as follows:

THAT, the said Marshall Sone, on or about May 25, 1998, failed to conduct himself in a manner which will 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, in that he was convicted by the Ontario Court (General Division) of a criminal offense, namely that during the period from and including the 1st day of March in the year 1989 to and including the 30th day of November in the year 1993, at the Municipality of Metropolitan Toronto, and elsewhere in the Province of Ontario, being a trustee of monies for the benefit of the creditors of the bankruptcy estates administered by Marshall Sone Receiver and Trustee Limited, with intent to defraud and in contravention of his trust, did convert monies, to a use that was not authorized by the trust, contrary to the Criminal Code.

Mr. Sone pleaded guilty to the charge, and confirmed that he understood that upon a plea of guilty, and upon that basis alone, he could be found guilty of the charge by the discipline committee.

In presenting their cases, neither counsel called evidence. A certified copy of the indictment in the Ontario Court (General Division), and a transcript of the criminal court proceeding, were filed as exhibits by the professional conduct committee. The prosecution's case was based on these two documents, and Mr. Greenspan acknowledged that his client was not contesting the issue of his guilt on the charge.

Based on the documents filed, and the plea of guilty, the discipline committee found Mr. Sone guilty of the charge laid against him by the professional conduct committee.

ORDER AS TO SANCTION

The panel then went on to a determination of the appropriate sanction. Neither party called evidence with respect to sanction, but counsel for both parties made submissions. Ms. McPhadden, on behalf of the professional conduct committee, asked for the most serious sanction the discipline committee can impose. She submitted that the principles of general and specific deterrence required that Mr. Sone be expelled, and that, in addition, there be a reprimand issued, and a fine imposed of \$25,000.

Mr. Greenspan did not take issue with the need for general and specific deterrence, nor with the proposed expulsion. He submitted, however, that if the ultimate sanction of expulsion did not get the attention of like-minded members, then nothing would, and that a reprimand and a fine in addition to expulsion amounted to a multi-tiered penalty, which was unrealistic, unfair and a "hollow notion". Mr. Greenspan also submitted that it was unfair, unwarranted, unneeded in terms of deterrence, and ultimately unenforceable, to impose a further financial penalty upon his client when he was already facing the prospect of incarceration in the event of failure to pay the fine imposed by the court in the criminal proceeding.

After deliberation, the panel made the following order:

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Sone be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Sone be and he is hereby fined the sum of \$15,000, to be remitted to the Institute within four (4) years from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Sone be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Sone'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;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in *The Globe and Mail*.
5. THAT Mr. Sone 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.

Reprimand

In keeping with past cases, the panel ordered that the member be reprimanded in writing by the chair of the hearing, to stress to him the serious nature of the offence and the unacceptability of his conduct as a chartered accountant.

Fine

There is no question that Mr. Sone's conduct was entirely unacceptable. Historically, the discipline and appeal committees have considered expulsion, fines, and publication of notice as serving the purposes of specific and general deterrence. Notwithstanding the submissions of counsel for Mr. Sone that his client's present financial status did not warrant a fine, the panel concluded that a fine was required in addition to expulsion in this case, so that the message sent to potentially like-minded members would be as strong a message as possible. The panel concluded that \$15,000 would be an appropriate fine in this case.

Expulsion

Expulsion from the Institute is often ordered in cases of moral turpitude, and the panel determined that the serious nature of this case, including the criminal conviction, left it no alternative but to expel Mr. Sone.

The chartered accountancy profession cannot and will not tolerate members who gain positions of trust because of their qualifications and designations, and then use that trust to steal funds for their own benefit.

Notice

The panel is aware that publication of Mr. Sone's expulsion is subject to panel discretion, but concluded that there were no compelling reasons to cause it to exercise its discretion not to publish. Mr. Greenspan expressed some concern about certain privacy issues relating to his client and these proceedings. The chair advised him that the publication in the local paper simply advised the public of the expulsion without details of the proceedings.

Certificate

The panel concluded that it is important that Mr. Sone no longer appear to be a member of the chartered accountancy profession after his expulsion. Accordingly, he was ordered to surrender his certificate of membership in the Institute to the secretary of the discipline committee.

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

D.P. SETTERINGTON, CA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

H.B. BERNSTEIN, CA
B.L. HAYES, CA
B.A. TANNENBAUM, CA
R.W. WARKENTIN (Public representative)

APPEAL COMMITTEE re Marshall Bryan Sone

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: An appeal by **MARSHALL BRYAN SONE, CA**, a member of the Institute, of the decision and order of the discipline committee made on November 11, 1998, pursuant to the bylaws of the Institute, as amended.

DECISION AND REASONS FOR DECISION MADE JUNE 21, 1999

This appeal was heard by a panel of the appeal committee of the Institute of Chartered Accountants of Ontario on June 21, 1999.

Ms. Deborah McPhadden appeared on behalf of the professional conduct committee. Mr. Sone attended on his own behalf, without benefit of legal counsel, and was accompanied by his wife.

REQUEST FOR ADJOURNMENT

At the outset of the hearing, Mr. Sone requested that the hearing be adjourned, pending the outcome of a judicial review application which he indicated he intended to file, to deal with the issue of his appeal having been prejudiced by incorrect information given out by the registrar's area of the Institute. Mr. Sone's complaint was that his current professional standing and his appeal had been or may have been negatively impacted by a statement which had been made by an employee of the Institute to an enquirer from the Ontario Securities Commission, to the effect that Mr. Sone was no longer a member in good standing, when that was, in fact, not the case.

Ms. McPhadden indicated it was her understanding that incorrect information as to Mr. Sone's membership status had, indeed, been given out to an enquirer by someone in the registrar's office following Mr. Sone's discipline hearing, but that the error had later been corrected. She submitted that if there remained an issue outstanding as to that matter, it was one having nothing to do with this appeal.

The panel deliberated on the adjournment request made by Mr. Sone, and determined that the incident described by him did not prejudice his membership status or his appeal before the appeal committee. The chair advised the parties that the panel found no merit in Mr. Sone's request for adjournment, and that his request was dismissed. The hearing then continued, Mr. Sone advising that he was proceeding under protest.

DECISION

Mr. Sone's submissions to the appeal committee were aimed at seeking the following changes to the discipline committee's order:

1. amending the order of expulsion to one of suspension;
2. reducing the quantum of the fine levied by the discipline committee; and
3. deleting the order as to newspaper publication, or, alternatively, changing the newspaper of publication from *The Globe and Mail* to a different newspaper.

After reviewing the decision and order and written reasons of the discipline committee, as well as the notice of appeal and other documents filed, and after hearing submissions from Mr. Sone and Ms. McPhadden, the appeal committee dismissed Mr. Sone's appeal and confirmed the decision and order of the discipline committee made on November 11, 1998. The parties were advised that written reasons would follow in due course, and these are those reasons.

REASONS FOR DECISION

The discipline committee found Mr. Sone guilty of a charge of professional misconduct under Rule of Professional Conduct 201.1, on the basis of his criminal conviction for fraud. Mr. Sone had pleaded guilty to the charge, and had confirmed that he understood that upon a plea of guilty, and upon that basis alone, he could be found guilty of the charge by the discipline committee.

After finding the member guilty of the charge, the discipline committee heard submissions as to sanction from both parties, and, after due deliberation, made the following order:

1. THAT Mr. Sone be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Sone be and he is hereby fined the sum of \$15,000, to be remitted to the Institute within four (4) years from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Sone be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Sone'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;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in *The Globe and Mail*.
5. THAT Mr. Sone 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.

The grounds for the appeal were as follows:

1. Mr. Sone, who was represented at the discipline committee hearing by his counsel, Mr. Brian Greenspan, was prevented from presenting information to the discipline panel, which may have influenced its determination as to the appropriate sanction, by the panel's refusal to place a publication ban on the proceedings so as to protect the confidentiality of the information to be given.
2. The professional conduct committee had information at its disposal which may have influenced the determination of sanction by the discipline committee, but did not present this evidence.
3. Counsel for the professional conduct committee referred to "the Kroeker case" during submissions at the discipline hearing, at a time when the written reasons for that

decision and order had not yet been issued by the discipline committee, and were therefore not available to Mr. Sone or his counsel.

4. Other case precedents referred to at the discipline hearing by counsel for the professional conduct committee had also not been made available to Mr. Sone or his counsel.
5. The fine of \$15,000 was inappropriate, given that the Ontario Court (General Division) had imposed a fine of only \$10,000 in the criminal proceeding, in recognition of Mr. Sone's financial status, and considering that the combination of these fines might impact on the eventual distribution of funds to Mr. Sone's victims.
6. As *The Globe and Mail* was a national newspaper distributed beyond "the geographic area of the member's current or former practice, employment and/or residence", as provided in Bylaw 575(3), it was an inappropriate newspaper in which to order publication of notice of this matter.

Ms. McPhadden responded to Mr. Sone's submissions as follows:

1. Mr. Sone's counsel at the discipline hearing, Mr. Greenspan, was not in any way prevented from making submissions on behalf of his client by a lack of a publication ban. Mr. Greenspan stated (at page 29, line 8 of the transcript): "I'm going to leave the reasons and the background in relation to that aspect of the matter, leave it untouched in terms of my submissions, because we feel his [Mr. Sone's] privacy interests are far more important than any justification for that period of loss and management, loss of control". A conscious and informed decision was made by Mr. Sone as to the submissions to be put before the discipline panel.
2. Ms. McPhadden did not know what Mr. Sone was referring to as information the professional conduct committee had but did not put forward at the discipline hearing. She submitted that the prosecution's case was based solely on Mr. Sone's criminal conviction, and referred to page 15, line 14 of the discipline transcript, where Mr. Greenspan stated: "Well, we would wish this record to reflect, and reflect clearly, Mr. Sone's acceptance of responsibility".
3. Ms. McPhadden indicated that, while the written reasons of the discipline committee in the Kroeker case had not been published at the date of Mr. Sone's discipline hearing, she had characterized the similarities and differences of the two cases in her submissions at the hearing. She stated that the written reasons for the Kroeker decision were now available, and that there had been no challenge by Mr. Sone of her description of the similarities and differences in the two cases.
4. Ms. McPhadden indicated that all other case precedents referred to by her at the discipline hearing had been made available to Mr. Sone and Mr. Greenspan.
5. Ms. McPhadden submitted that the appeal committee should apply the principle stated in the case of *R. v. Basha* (1980), 61 A.P.R., 23 Nfld. & P.E.I.R. 286, at page 299, that "a court of appeal should only interfere with a trial judge's discretionary powers as to sentencing if it is apparent that the judge has misapplied one or other of the accepted principles of sentencing, in all the circumstances of the case, with the result that the sentence imposed is outside the range of sentencing for that type of offence." Ms. McPhadden then cited a number of precedent cases to show that the financial penalty imposed upon Mr. Sone was within the bounds of other similar decisions.

6. Bylaw 575(3) states: "Notice of expulsion of a member shall be given to the public by publication in a newspaper distributed in the geographic area of the member's current or former practice, employment and/or residence, or in such other manner as the discipline committee may determine to be appropriate ..." (emphasis added). Ms. McPhadden submitted that, while it was true *The Globe and Mail* was a national newspaper, it was nevertheless "a newspaper distributed in the geographic area" of Mr. Sone's current or former practice, employment and/or residence. She further submitted that, in any event, the discipline committee had the authority under Bylaw 575(3) to order publication "in such other manner as the discipline committee may determine to be appropriate".

The appeal committee considered the submissions made, and determined as follows:

1. Mr. Sone had not been prevented from presenting to the discipline committee any information which he or his counsel felt might have been relevant to his case.
2. The professional conduct committee prosecuted its case before the discipline committee solely on the basis of Mr. Sone's criminal conviction, and not on the basis of any other evidence which may have been in its possession.
3. Mr. Sone did not dispute Ms. McPhadden's representation of the facts in the *Kroeker* case, and other case precedents were available to Mr. Sone and his counsel, as they are available to all members charged and their counsel.
4. By a plain reading of Bylaw 575(3), there was nothing inappropriate about the order as to publication in *The Gobe and Mail*.

The issue before the appeal committee was whether or not the discipline committee, upon consideration of all the evidence before it, properly exercised its discretion and imposed a sanction within an appropriate range of sanctions given the facts of this particular case. Unless there was an error in principle made, or unless the sanction imposed was not within the appropriate range of sanctions consistent with earlier cases, the appeal committee determined that it should not disturb the penalty and substitute its judgment for that of the discipline committee.

Upon deliberation, the appeal committee concluded that the discipline committee had properly considered and applied the principles of sentencing, and had imposed a sanction with the range of sanctions appropriate for a breach of Rule of Professional Conduct 201.1. Accordingly, the appeal committee determined there to be no basis upon which to vary the sanction imposed on Mr. Sone and, as a result, dismissed his appeal and confirmed the order of the discipline committee.

DATED AT TORONTO THIS DAY OF JULY, 1999
BY ORDER OF THE APPEAL COMMITTEE

M.B. MARTENFELD, FCA – CHAIR
THE APPEAL COMMITTEE

MEMBERS OF THE PANEL:

R.J.L. BOWMAN, CA
C.J. BURKE, FCA
D.J. HERLICK, CA
E.W. SLAVENS, FCA
F.J. WELSH, FCA
S. HORSFALL EATON (Public representative)