



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO

TO: Michael Lawrence Gary, CA

AND TO: The Discipline Committee of the Institute of
Chartered Accountants of Ontario

The Professional Conduct Committee hereby makes the following charges
against Michael L. Gary, CA, a member of the Institute:

1. THAT, the said Michael L. Gary, in or about the period April 1997 to March 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 converted to his own use the sum of \$25,000 which was given to Michael Gary Holdings Inc. by H. Wagman Limited with instructions to invest the money on behalf of H. Wagman Limited.
2. THAT, the said Michael L. Gary, in or about the period April 1997 to March 1998, failed to handle funds in accordance with the terms of the trust pursuant to which he received them, contrary to Rule 212.1 of the rules of professional conduct, in that he received the sum of \$25,000 from H. Wagman Limited with instructions to invest the money in a mortgage on behalf of H. Wagman Limited, and he did not invest the money as instructed.
3. THAT, the said Michael L. Gary, in or about the period September 1996 to May 14, 1997, while engaged as the auditor for Corporate Cars (A Limited Partnership), failed to hold himself free of any influence, interest or relationship which, in respect of the engagement, would impair his professional judgment or objectivity or which, in the view of the reasonable observer, would impair his professional judgment or objectivity, in that he borrowed \$30,000 from Paul Shapiro, a partner of Corporate Cars, contrary to Rule 204.1 of the rules of professional conduct.
4. THAT, the said Michael L. Gary, in or about the period July 1997 to March 1998, while engaged as the auditor for Corporate Cars (A Limited Partnership), failed to hold himself free of any influence, interest or relationship which, in respect of the engagement, would impair his professional judgment or objectivity or which, in the view of the reasonable observer, would impair his professional judgment or objectivity in that Paul Shapiro, a partner of Corporate Cars, guaranteed a \$90,000 loan he took from Canada Trust, contrary to Rule 204.1 of the rules of professional conduct.

Dated at Toronto this 21st day of January 1999.

UWE MANSKI, FCA - DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 1956

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **MICHAEL LAWRENCE GARY, CA**, a member of the Institute, under **Rules 201.1, 204.1 and 212.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Michael Lawrence Gary, CA
216 Glenayr Road
TORONTO, Ontario
M4P 3C3

DECISION MADE JUNE 10, AND ORDER MADE JULY 22, 1999

DECISION

THAT, having seen and considered the evidence, including the agreed statements of facts, filed, and having heard the plea of guilty to charges Nos. 1, 2, 3 and 4, the Discipline Committee finds Michael Lawrence Gary guilty of charges Nos. 1, 2, 3 and 4.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Gary be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Gary be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Gary be and he is hereby suspended from membership in the Institute for a period of three (3) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Gary provide, at his expense, to the director of standards enforcement:
 - (a) medical reports from his doctor to confirm that, according to urine testing and/or such other testing as the doctor considers appropriate, Mr. Gary has continued since the date of the previous medical report to abstain from the use of cocaine. The first such medical report shall be provided within one (1) month from the date this Decision and Order becomes final under the bylaws, and each subsequent medical report shall be provided within one (1) month from the date of the previous medical report.
 - (b) reports from his psychiatrist to confirm that Mr. Gary has continued since the date of the previous report to take such medical treatment, including individual counselling, anti-depressant treatment and continued follow-up at the Donwood Institute, as the psychiatrist considers appropriate to deal with Mr. Gary's cocaine addiction. The first such report shall be provided within one (1) month from the date this Decision and Order becomes final under the bylaws, and each subsequent medical report shall be provided within six (6) months from the date of the previous report.

5. THAT Mr. Gary be and he is hereby required to complete a period of supervised practice upon the following terms and conditions:
- (a) the term of the supervised practice shall be five (5) years from the date this Decision and Order becomes final under the bylaws;
 - (b) the cost of the supervised practice shall be borne by Mr. Gary;
 - (c) the supervisor shall report to the professional conduct committee every six (6) months;
 - (d) Mr. Gary shall nominate the supervisor, who shall be a member of the Institute in good standing, and shall advise the professional conduct committee of his choice of supervisor within thirty (30) days from the date this Decision and Order becomes final under the bylaws;
 - (e) the supervisor shall review all files pertaining to audit, review and compilation engagements, and shall evidence such review by signing the working papers prior to release of the financial statements.
6. THAT in the event there is a material change in circumstances, either Mr. Gary or the professional conduct committee may apply to the chair of the discipline committee at an assignment hearing for the modification of a term or terms of paragraph 4 or 5 of this Order, provided it shall not be open to Mr. Gary to apply to modify or alleviate either his obligation to provide continuing satisfactory evidence of his uninterrupted abstinence from the use of cocaine, or the consequence of expulsion for failure to provide such evidence.
7. THAT notice of this Decision and Order, disclosing Mr. Gary'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*.
8. THAT Mr. Gary 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 during the period of suspension and thereafter returned to Mr. Gary. In the event Mr. Gary fails to surrender his certificate of membership within this ten day period, his suspension pursuant to paragraph 3 shall be extended one day for each day the certificate remains undelivered to the secretary.
9. THAT in the event Mr. Gary fails to comply with a requirement of this Order within the time period specified, 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 7 hereof, and in *The Globe and Mail*.

DATED AT TORONTO THIS 7TH DAY OF SEPTEMBER, 1999
BY ORDER OF THE DISCIPLINE COMMITTEE



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

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 1956

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **MICHAEL LAWRENCE GARY, CA**, a member of the Institute, under **Rules 201.1, 204.1 and 212.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Michael Lawrence Gary, CA
216 Glenayr Road
TORONTO, Ontario
M4P 3C3

REASONS FOR THE DECISION MADE JUNE 10, AND THE ORDER MADE JULY 22, 1999

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on June 10, 1999 to hear evidence concerning charges brought by the professional conduct committee against Michael Lawrence Gary.

On June 10, the discipline committee concluded that Mr. Gary was guilty of the charges, and made its decision known that day. The hearing continued on June 10 and June 11, when the committee heard evidence and submissions with respect to the appropriate sanction to be imposed on Mr. Gary.

The committee met again, in the absence of the parties, on July 22, to complete its deliberations on the issue of sanction, and to formulate its order, which was thereafter communicated to the parties. These are the reasons for the decision and order.

At the hearing, the professional conduct committee was represented by Mr. Brian Bellmore, who was accompanied by Mr. Bruce Armstrong, the investigator appointed by the professional conduct committee. Mr. Gary was present, and was represented by Mr. Larry Banack. Rosalyn Zisman, Mr. Gary's wife, was also present.

DECISION ON THE CHARGES

The charges, which were filed as Exhibit 3, read as follows:

1. THAT, the said Michael L. Gary, in or about the period April 1997 to March 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 converted to his own use the sum of \$25,000 which was given to Michael Gary Holdings Inc. by H. Wagman Limited with instructions to invest the money on behalf of H. Wagman Limited.
2. THAT, the said Michael L. Gary, in or about the period April 1997 to March 1998, failed to handle funds in accordance with the terms of the trust pursuant to which he received them, contrary to Rule 212.1 of the rules of professional conduct, in that he received the sum of \$25,000 from H. Wagman Limited with instructions to invest the money in a mortgage on behalf of H. Wagman Limited, and he did not invest the money as instructed.

3. THAT, the said Michael L. Gary, in or about the period September 1996 to May 14, 1997, while engaged as the auditor for Corporate Cars (A Limited Partnership), failed to hold himself free of any influence, interest or relationship which, in respect of the engagement, would impair his professional judgment or objectivity or which, in the view of the reasonable observer, would impair his professional judgment or objectivity, in that he borrowed \$30,000 from Paul Shapiro, a partner of Corporate Cars, contrary to Rule 204.1 of the rules of professional conduct.
4. THAT, the said Michael L. Gary, in or about the period July 1997 to March 1998, while engaged as the auditor for Corporate Cars (A Limited Partnership), failed to hold himself free of any influence, interest or relationship which, in respect of the engagement, would impair his professional judgment or objectivity or which, in the view of the reasonable observer, would impair his professional judgment or objectivity in that Paul Shapiro, a partner of Corporate Cars, guaranteed a \$90,000 loan he took from Canada Trust, contrary to Rule 204.1 of the rules of professional conduct.

Mr. Gary entered a plea of guilty to each of the charges, and confirmed he understood that, on the basis of his plea, and his plea alone, he could be found guilty of the charges.

Mr. Bellmore filed with the discipline committee an agreed statement of facts, and a document brief containing the relevant documents referred to in the agreed statement of facts, which he went through in some detail. Mr. Banack did not present evidence.

The discipline committee deliberated, and concluded that the charges had been proven, and that Mr. Gary was guilty of professional misconduct.

ORDER AS TO SANCTION

The hearing then proceeded to deal with the issue of sanction. Mr. Bellmore stated that the professional conduct committee would not be calling additional evidence, but would be relying on the exhibits filed.

Evidence on Behalf of the Member

Mr. Banack did call evidence on behalf of the member, and filed an exhibit brief (Exhibit 6). Mr. Michael Levy, CA, who had known Mr. Gary since high school, and had used Mr. Gary's professional services for 25 years, gave evidence. Mr. Levy knew Mr. Gary as a client and as a friend. He testified that, should Mr. Gary retain his membership in the Institute and resume practising public accounting, he would use Mr. Gary as his accountant because, in his opinion, as a chartered accountant Mr. Gary served his clients well.

Mr. John Colomby, CA, a partner of Soberman Isenbaum & Colomby, also gave evidence on Mr. Gary's behalf. He had been a partner of Mr. Gary for 27 years, and had seen him on a daily basis for most of those years. Mr. Gary had proven to be a knowledgeable, creative and hardworking partner, whose clients spoke highly of him.

Mr. Colomby stated that he had noticed a change in Mr. Gary in the last few years. He described this change as a lack of interest and seeming lack of motivation. At the same time, he indicated, he did know that Mr. Gary was having some financial problems.

It was clear from the cross-examination of Mr. Colomby that Mr. Gary hid from him as long as he could his use of cocaine. In fact, it was only when Paul Shapiro, who had loaned Mr. Gary \$30,000, and had given a guarantee so that Mr. Gary could borrow a further \$90,000, called Mr.

Colomby and explained that Mr. Gary was indebted to him and addicted to cocaine, that Mr. Colomby found out about the problem.

The accounting firm repaid from Mr. Gary's capital account in the firm his indebtedness to client H. Wagman Limited, and Paul Shapiro, partner of client Corporate Cars, as well as the \$90,000 secured by Mr. Shapiro's guarantee to Canada Trust.

Mr. Colomby testified that no further client borrowing problems had surfaced subsequent to Mr. Gary's departure from the firm.

Rosalyn Zisman, Mr. Gary's wife of 30 years, and a lawyer who practises family law and child protection law, testified that her husband had kept his use of cocaine from her, and that she had only found out about it from Mr. Colomby. She stated that when she did find out about the addiction, she agreed to stay with him only because he agreed to enter a treatment program. Since that time, with only one exception, Mr. Gary has been diligent and successful in his efforts to abstain from using the drug. She testified that he was now more involved with their children, and was returning to his old self, although his current job with Corporate Cars was not as demanding or remunerative as his public accounting practice had been.

Mr. Gary gave evidence and was cross-examined at some length. He testified that he took money to support a cocaine habit. He had started to use cocaine in the 1980s on a casual basis, and in the mid-1990s started to use it more and more. He knew that misleading his clients, and using their money to support his habit, was wrong, but he could not explain why he did it. He stated that for some time he had been just trying to keep his head above water, and that, as he understands it now, the drug is so strong that it completely overtakes a person's willpower.

It was only when he had to acknowledge to Mr. Shapiro that he could not repay the \$30,000 loan, and could not make the loan payments to Canada Trust which Mr. Shapiro had guaranteed, that Mr. Gary acknowledged he had a cocaine problem. Prior to then, he had not disclosed to anyone, including the psychiatrist he was seeing as a condition of Mr. Shapiro's Canada Trust loan guarantee, that he was addicted to cocaine.

One of the most important issues in this case, if not the most important, was whether or not Mr. Gary would be able to continue to abstain from the use of cocaine, and it became clear during testimony that it was a complex and uncertain issue. It was common ground that Mr. Gary would always be addicted to the drug. The issue was whether or not he would or could abstain from using it.

Mr. Adrian Hill gave evidence on behalf of Mr. Gary. Mr. Hill is a lawyer, and the executive director of an addiction peer support group. He is a reformed alcoholic who was fortunate enough to get help before he got into trouble.

Mr. Hill was of the opinion that Mr. Gary became addicted like many others in the mid-1980s, who took cocaine as a recreational drug, unaware of its addictive properties. According to Mr. Hill, it is now recognized that cocaine is one of the most, if not the most, addictive substances known to man.

Mr. Hill testified about the three goals of the addiction rehabilitation program, namely the recovery of the addict, facilitating that recovery (with the hope of guaranteeing it), and the protection of the public. It was his opinion that an order requiring Mr. Gary to enter into what Mr. Hill called a monitoring contract, which would include random drug testing, and provide for the summary removal of Mr. Gary's designation in the event he again resorted to the use of cocaine, would adequately protect the public and facilitate Mr. Gary's recovery. It was further his view that Mr.

Gary likely had better than an 80% chance of remaining free of the use of cocaine because of the progress he had made, and the fact that he had remained drug free for as long as he had.

On cross-examination, Mr. Hill admitted that there are two approaches used by professional bodies in dealing with members convicted of professional misconduct because of addictions. One approach is for the professional body to revoke the designation. The other approach, favoured by Mr. Hill, is to provide the opportunity for, and to help facilitate, rehabilitation. Mr. Hill acknowledged that he was not a doctor or a scientist, and that the statistical evidence was limited, but stated that it was his opinion as one experienced in rehabilitation programs that a monitoring contract would protect the public and help facilitate Mr. Gary's recovery from his addiction.

Submissions as to Sanction

The discipline committee has dealt in the past with members whose misconduct resulted from addiction to alcohol, but this is the first case in which the committee has been asked to deal with a member whose misconduct resulted from an addiction to cocaine. The committee heard articulate submissions from both counsel, which we have tried to reflect in the analysis set out below.

The professional conduct committee asked that Mr. Gary be expelled.

Mr. Gary asked that he be permitted to maintain his membership, subject to random testing to make sure he does not relapse into cocaine use. Counsel for Mr. Gary submitted that a monitoring contract should be ordered, the essential terms of which would be random testing for cocaine and expulsion in the event of a positive test.

The three general principles of sentencing have been applied in many cases over the years. A review of those cases, which are available to both parties, helps the discipline committee apply the principles in a consistent way.

While there were many factors to be considered, there were essentially two issues for the committee to determine, namely whether the misconduct of Mr. Gary was such that it warranted expulsion in and of itself as a general deterrent and, if not, what order could be made which would facilitate rehabilitation and specifically deter the misconduct in the future.

Consideration of Expulsion for Moral Turpitude

When a member takes money from a client for his own personal use, the conduct is usually characterized as disclosing moral turpitude, and often results in expulsion from membership in the Institute. As is clear from a reading of a number of decisions of the discipline and appeal committees over the years, there is little or no tolerance for members who breach the trust they have received from their clients and take money from them. In the case involving Mr. Ferri, the appeal committee said:

The appeal committee agreed with the reasons of the discipline committee – in particular, where it stated:

In determining the sanctions, the committee gave consideration to the issues of general deterrence, specific deterrence and rehabilitation.

While the committee gave due regard to Mr. Ferri's letters of reference (filed as Exhibit 5), it could not ignore the moral

turpitude involved in the events leading to Mr. Ferri's conviction. Any question of leniency for Mr. Ferri had to be weighed against the need to protect the integrity of the profession.

There is evidence to suggest that in terms of specific deterrence and rehabilitation, Mr. Ferri is unlikely to become involved again in the kind of activities which led to his criminal conviction. However, the committee noted that in the past the appropriate sanction for cases involving fraud has been expulsion from membership. The issue of general deterrence, as it applies to the protection of the public interest through the observance by all chartered accountants of professional and ethical standards and the maintenance of the good reputation and integrity of the profession, warranted Mr. Ferri's expulsion from membership.

Mr. Silverman, who stole an inheritance of over \$100,000 from a client of modest means, and had not, at the time of the discipline committee hearing, repaid any of the money, with devastating repercussions for the client, was fined \$25,000 and expelled.

Mr. Lapedus was fined \$10,000 and expelled. The appeal committee in that case said:

The discipline committee stated in its reasons that it considered the principle of general deterrence to be of utmost importance in this case, as Mr. Lapedus' misconduct involved moral turpitude, taking place over an extended period of time. The facts of the case support this position. Mr. Lapedus admitted that he altered cheques, and used funds entrusted to him by clients for his own personal use. His altering of approximately one dozen client cheques occurred over a two-year period. Misconduct of this nature has typically resulted in expulsion in past disciplinary cases. The imposition of an expulsion in this case is, therefore, within the range of sentencing for the type of offence involved.

Both Mr. Silverman and Mr. Lapedus appealed the decision of the discipline committee to the appeal committee. When their appeals were unsuccessful, both applied for judicial review, and, in both cases, the courts denied the applications and upheld the sanctions imposed by the discipline committee.

Mr. Kwiatkoski used his position of trust as volunteer manager of a local credit union to ostensibly make loans to fictitious borrowers in order to obtain credit union money to maintain a business which he owned, in large part because he felt obliged to the people who worked for him to keep the business afloat. He repaid all the money he had taken, and then reported his misconduct to the Institute and the police. The discipline committee was told at the hearing that it was very unlikely Mr. Kwiatkoski's misconduct would ever have been discovered had he not reported it himself. Nevertheless, he had taken money for personal use while in a position of trust, and been convicted of a criminal offence. He was expelled.

Not all misconduct involving moral turpitude has resulted in expulsion. There have been occasions when the discipline committee has been satisfied that the member can be rehabilitated, that the public can be adequately protected, and that the misconduct itself was not such that it warranted expulsion in furtherance of the principle of general deterrence in light of the mitigating factors involved.

Jerrold Paul Greenspan, who was convicted of two charges under Rule 201.1, and one charge under each of Rules 205 and 206, was not expelled. As is clear from the reasons in that case,

however, expulsion was considered. The committee said:

Though expulsion was not requested by the professional conduct committee, the first issue with which the discipline committee had to deal was whether or not specific and general deterrence required expulsion of the member in the circumstances of this case. There was no question that Mr. Greenspan's misconduct was entirely unacceptable, and that expulsion was within the range of appropriate sanctions for such misconduct.

The committee compared the facts and the circumstances of members in other cases with the facts and the circumstances of the member in this case, and concluded that the expulsion of Mr. Greenspan was not required. Among the factors which persuaded the committee that expulsion was not necessary were the following:

- the professional conduct committee was not seeking expulsion;
- it did not appear that Mr. Greenspan was ungovernable;
- Mr. Greenspan recognized that what he had done was wrong;
- it appeared that the discipline process itself – the investigation, charges and hearing – had already had some rehabilitative effect upon the member; and
- there was no question as to Mr. Greenspan's competence to practise.

In a recent case, Mr. Joel Greenspan, who received remunerative benefits directly from a number of clients without his employer's knowledge or consent, was fined \$3,000 and suspended from membership for nine months. In that case, the discipline committee was satisfied that the misconduct, which seemed to originate from the pressures Mr. Greenspan was under resulting from his wife's illness and death from cancer, would not be repeated.

Thus, as demonstrated by the above cases, whether or not misconduct warrants expulsion depends upon the circumstances in each case, in particular the mitigating and aggravating circumstances.

Mitigating and Aggravating Factors

There are a number of mitigating factors in this case. While there was more than one charge, the misconduct as a whole amounted to a first offence, and while Mr. Gary abused the trust of two clients, the investigation turned up no other evidence of misconduct.

The member cooperated with his clients, his firm and the Institute once the misconduct was discovered. Restitution has been made to the clients from Mr. Gary's portion of his firm's capital account, and while it appears the firm took the leading role in arranging the restitution, it is apparent Mr. Gary did not object or oppose.

The victims, Mr. Wagman and Mr. Shapiro, have both written letters on Mr. Gary's behalf. It is quite apparent that the member's misconduct did not result in any significant detriment to Mr. Wagman or Mr. Shapiro. Their support for Mr. Gary is explained in part because one is a relative and one is a friend, but the relevant, mitigating factor is that neither client suffered a loss.

The evidence is that, aside from the use of cocaine, Mr. Gary has displayed good moral character throughout his career. Other than the misconduct leading to the charges in this case, he has maintained the standards of the profession and served his clients well. Mr. Gary has recognized

that he has a problem, has voluntarily sought help, and has refrained from practising public accounting.

There was evidence given of rehabilitation with respect to the cocaine addiction. The issue of whether or not that rehabilitation can reasonably be expected to continue is necessarily an issue on which there is no precise evidence. Mr. Hill, who acknowledges the statistical evidence available is not encouraging, was nevertheless optimistic that Mr. Gary will be successful in his rehabilitation. While the discipline committee was not provided with real scientific evidence to support this optimism, it was apparent that Mr. Gary has achieved considerable success in abstaining from the use of cocaine, and he appeared to be well on the way to rehabilitation.

As well as mitigating factors in this case, however, there are also aggravating factors. Mr. Gary's misconduct was deliberate, calculated, planned and carried out over an extended period of time. He converted over \$140,000 of clients' money to his own use. In doing so, he breached three rules of professional conduct which are fundamentally important to the profession.

While Mr. Gary acknowledged his misconduct to his clients, partners and family, after he was discovered, he did not tell anyone until it became apparent that others were going to disclose the misconduct if he did not.

The fact that the use of cocaine is illegal is also an aggravating factor. It is clear that Mr. Gary became acquainted with one or more sources of supply of cocaine, and with one or more persons engaged in criminal activity usually resulting in substantial periods of incarceration for those caught.

There is no doubt that Mr. Gary's behaviour was the sort of unacceptable conduct which often, if not usually, warrants expulsion.

Consideration of Rehabilitation

The agreed statement of facts stated that in or about 1995, the member became ill with an addiction to cocaine. This raises the question of rehabilitation in the context of an illness, and whether the illness can be successfully treated.

The committee was told by counsel for Mr. Gary that addiction is recognized as an illness, and that it is wrong to discriminate against people with an illness. However, it seems clear to us that if Mr. Gary cannot be successfully treated, his addiction to cocaine will preclude him from continued membership in the Institute. It is not possible to represent to the public that Mr. Gary is a trustworthy chartered accountant if he is using cocaine.

Whether or not Mr. Gary should have known that cocaine was addictive when he began using it casually in the 1980s is the subject of some debate. While he stated he did not know that the use of cocaine would become addictive when he began using it, he did know, or ought to have known, prior to 1995, that it was highly addictive. He did not seek help, however, until he was compelled to do so some time after that.

Counsel for the professional conduct committee characterized Mr. Gary's illness as a self-imposed illness, and submitted that if Mr. Gary's explanation that he took cocaine to relieve the stress of practice is correct, there may be a substantial risk that he will again resort to cocaine use if he is allowed to retain his designation and resumes a career in public accounting. Mr. Bellmore submitted that, in these circumstances, failure to expel Mr. Gary imposes too great a risk on the public.

Mr. Gary's counsel acknowledged that there are aggravating factors, and that there is a possibility his client will again resort to the use of cocaine. He submitted that the proposed monitoring contract, containing a provision for mandatory testing, would disclose the use of cocaine, and would therefore be an effective rehabilitative sanction.

After deliberating on the evidence and the submissions heard, the committee made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Gary be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Gary be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Gary be and he is hereby suspended from membership in the Institute for a period of three (3) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Gary provide, at his expense, to the director of standards enforcement:
 - (a) medical reports from his doctor to confirm that, according to urine testing and/or such other testing as the doctor considers appropriate, Mr. Gary has continued since the date of the previous medical report to abstain from the use of cocaine. The first such medical report shall be provided within one (1) month from the date this Decision and Order becomes final under the bylaws, and each subsequent medical report shall be provided within one (1) month from the date of the previous medical report.
 - (b) reports from his psychiatrist to confirm that Mr. Gary has continued since the date of the previous report to take such medical treatment, including individual counselling, anti-depressant treatment and continued follow-up at the Donwood Institute, as the psychiatrist considers appropriate to deal with Mr. Gary's cocaine addiction. The first such report shall be provided within one (1) month from the date this Decision and Order becomes final under the bylaws, and each subsequent medical report shall be provided within six (6) months from the date of the previous report.
5. THAT Mr. Gary be and he is hereby required to complete a period of supervised practice upon the following terms and conditions:
 - (a) the term of the supervised practice shall be five (5) years from the date this Decision and Order becomes final under the bylaws;
 - (b) the cost of the supervised practice shall be borne by Mr. Gary;
 - (c) the supervisor shall report to the professional conduct committee every six (6) months;
 - (d) Mr. Gary shall nominate the supervisor, who shall be a member of the Institute in good standing, and shall advise the professional conduct committee of his choice of supervisor within thirty (30) days from the date this Decision and Order becomes final under the bylaws;
 - (e) the supervisor shall review all files pertaining to audit, review and compilation engagements, and shall evidence such review by signing the working papers prior to release of the financial statements.
6. THAT in the event there is a material change in circumstances, either Mr. Gary or the

professional conduct committee may apply to the chair of the discipline committee at an assignment hearing for the modification of a term or terms of paragraph 4 or 5 of this Order, provided it shall not be open to Mr. Gary to apply to modify or alleviate either his obligation to provide continuing satisfactory evidence of his uninterrupted abstinence from the use of cocaine, or the consequence of expulsion for failure to provide such evidence.

7. THAT notice of this Decision and Order, disclosing Mr. Gary'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*.
8. THAT Mr. Gary 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 during the period of suspension and thereafter returned to Mr. Gary. In the event Mr. Gary fails to surrender his certificate of membership within this ten day period, his suspension pursuant to paragraph 3 shall be extended one day for each day the certificate remains undelivered to the secretary.
9. THAT in the event Mr. Gary fails to comply with a requirement of this Order within the time period specified, 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 7 hereof, and in *The Globe and Mail*.

Reprimand

The discipline committee believes that a reprimand in writing from the chair of the hearing is necessary as a specific deterrent to the member, to stress to him the serious nature of his offences, and the unacceptability of his conduct as a chartered accountant.

Fine

The professional conduct committee asked for a modest fine of \$1,000, on the basis that a larger fine might put an undue burden on Mr. Gary's family assets, which in turn might impair the member's rehabilitation. The discipline committee decided, however, that a more substantial fine was required, as both a specific deterrent to Mr. Gary, and a general deterrent to like-minded members. In the circumstances of the case, we considered a fine in the amount of \$5,000 to be appropriate, and, in the context of the order as a whole, did not consider that quantum of fine to be an undue burden on the family.

Suspension

The committee concluded that, even though Mr. Gary's misconduct arose out of his cocaine addiction, the misconduct nevertheless involved dishonesty, which, in the absence of an order of expulsion, required an order of suspension of Mr. Gary's rights and privileges of membership in the Institute for a period of time, as both a specific and a general deterrent. It was ultimately determined that a suspension of three months was the appropriate period.

Rehabilitation vs. Expulsion

We have set out above the factors we considered in deciding upon a rehabilitative order in this case instead of one of expulsion. Ultimately, the committee came to the conclusions that:

- in the circumstances of this case, expulsion was not required as a general deterrent; and

- permitting Mr. Gary to continue as a member, on the condition he provide continuing evidence of his abstinence from the use of cocaine, would facilitate his rehabilitation and adequately protect the public.

Publication

Publication of the decision and order, including Mr. Gary's name, is, in the opinion of the committee, a general deterrent. Communication of the fact that the profession views breaches of its bylaws and rules of professional misconduct seriously is an important factor in the governance of the profession. The disciplinary process of a self-governing professional body must be viewed by its members and the public as an open process. The normal publication of these proceedings was therefore ordered.

Certificate of Membership

The committee felt that during the time of suspension it was important that Mr. Gary not hold himself out to the general public as a chartered accountant, and, accordingly, ordered that he submit his certificate of membership to the committee secretary, to be held during the period of suspension.

DATED AT TORONTO THIS *2nd* DAY OF NOVEMBER, 1999
BY ORDER OF THE DISCIPLINE COMMITTEE



D.P. SETTERINGTON, CA – CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

B.M. BYRNE, CA
P.A. GOGGINS, CA
B.A. TANNENBAUM, CA
K. TSE, CA
R.W. WARKENTIN (Public representative)