

Michael Norman Howe: Summary, as Published in *CheckMark*

Michael Norman Howe, of North York, was found guilty of a charge under Rule 206 of failing to perform his professional services in accordance with generally accepted standards of practice of the profession. In the audit of a large financial institution, he failed to obtain adequate audit evidence, failed to adequately assess audit evidence obtained, accepted representations of management without sufficient evidence, and failed to adequately document matters important to support the audit report. Mr. Howe was fined \$50,000 and suspended from membership for six months.

Mr. Howe returned to MEMBERSHIP IN GOOD STANDING on August 4th, 1997.

CHARGE(S) LAID re Michael N. Howe

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

1. WITHDRAWN BY PCC – BWS
2. THAT, the said Michael N. Howe, on or about the 19th day of January 1990, while a partner with the firm Peat Marwick Thorne, Chartered Accountants, caused an opinion to be expressed on the financial statements of Standard Trustco Limited, Standard Trust Company and Standard Loan Company for the year ended December 31, 1989, and did not perform his professional services in accordance with generally accepted standards of practice of the profession, including the recommendations set out in the *CICA Handbook*, contrary to Rule 206 of the rules of professional conduct, in that:
 - (a) WITHDRAWN BY PCC – BWS
 - (b) he failed to obtain adequate audit evidence in assessing the value of mortgage security on mortgages in arrears, certain of which were noted in the working papers as being “in power of sale”;
 - (c) WITHDRAWN BY PCC – BWS
 - (d) in assessing the property values assigned to “Properties in Possession” he relied on the views expressed by management without obtaining adequate audit evidence to satisfy himself as to the accuracy of the representations made;
 - (e) WITHDRAWN BY PCC – BWS
 - (f) WITHDRAWN BY PCC – BWS
 - (g) having identified a number of mortgage loans to OWL Developments, some of which were in arrears or under power of sale, he failed to take adequate audit steps to identify the extent of the loan concentration to OWL Developments and related parties and the effect of such loan concentration on the financial position of the company;
 - (h) having identified that certain mortgage loans to OWL Developments were in arrears or under power of sale, he failed to take adequate audit steps to evaluate the sufficiency of specific mortgage allowances on each of the outstanding mortgage loans to OWL Developments and related parties;
 - (i) he failed to adequately address the significance of the number of OWL Developments mortgage loans falling into arrears and that Standard Trust was managing certain of the mortgaged properties;
 - (j) he failed to adequately address the reasons why substantial amounts due from OWL Developments and related companies were in the “Mortgage Collections Receivable Account”;

- (k) WITHDRAWN BY PCC – BWS
- (l) WITHDRAWN BY PCC – BWS
- (m) he failed to obtain adequate audit evidence to properly assess the appropriate amount to include in the general allowance for loan loss;
- (n) he failed to give adequate weight to the arrears report listing when evaluating the specific or general loan loss allowances;
- (o) WITHDRAWN BY PCC – BWS
- (p) he failed to adequately identify and respond to the increased risk accompanying mortgage loans resulting from the trend toward a greater proportion of commercial loans and a lesser proportion of residential mortgages;
- (q) in determining the adequacy of the specific loan loss allowances with respect to mortgage loans, he failed to obtain adequate audit evidence to verify the existence of the personal covenants to pay the mortgages and he failed to make a proper assessment of the ability of the mortgagor or guarantor to pay;
- (r) he failed to make adequate enquiries as to the creditworthiness of the purchaser of a property that was previously in possession where consideration for the purchase was a 100% take back mortgage provided by Standard Trust in the approximate amount of 2.7 million dollars;
- (s) WITHDRAWN BY PCC – BWS
- (t) he failed to obtain adequate audit evidence as to the value of the security on mortgages over the materiality level to allow him to come to a reasonable conclusion as to the appropriateness of the amount of the loan loss allowance and instead placed undue reliance on the representations of management;
- (u) WITHDRAWN BY PCC – BWS
- (v) he failed to obtain adequate audit evidence to address the issues raised by the solicitors for Standard Trust in their response to Standard Trust's enquiry letter pertaining to outstanding litigious matters that might have affected the company;
- (w) he failed to obtain adequate audit evidence to determine the extent of the capitalization of interest accumulated on mortgages in arrears and to determine whether the amount was material so as to require disclosure in the financial statements;
- (x) having determined that certain mortgage loans required a loss provision, he failed to either qualify his opinion or advise management to provide specific loss provisions and instead took the position that the losses

would be covered by the general allowance for loan loss which general allowance was insufficient for that purpose;

- (y) he failed to obtain adequate audit evidence as to the creditworthiness of certain mortgagors;
- (z) he failed to document matters important in providing evidence to support the content of his audit report;
- (aa) he failed to apply an appropriate degree of professional skepticism in carrying out the audit engagement.
- (bb) he failed to properly assess the adequacy of the allowance of approximately .5 million dollars against deferred mortgage loan losses of 2.3 million dollars (referred to in the working paper file as "Notes Receivable – Real Estate") which Standard Trust management regarded as recoverable in the future through personal guarantees.

DATED at Toronto this 29th day of June 1992.

B.G. BROOKS, CA – DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Michael Norman Howe

DECISION AND ORDER IN THE MATTER OF: Charges against **MICHAEL NORMAN HOWE, CA**, a member of the Institute, under **Rules 202 and 206** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE SEPTEMBER 5, 1996

DECISION

THAT, having seen, heard and considered the evidence, Charge No. 1 having been withdrawn, the Discipline Committee finds Michael Norman Howe guilty of Charge No. 2.

ORDER

IT IS ORDERED in respect of Charge No. 2:

1. THAT Mr. Howe be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Howe be and he is hereby fined the sum of \$50,000, 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. Howe 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. Howes 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 notice of this Decision and Order, not disclosing Mr. Howes name, be published in The Globe and Mail, such notice to state that the auditor of Standard Trustco Limited, Standard Trust Company and Standard Loan Company for the fiscal year ended December 31, 1989, was found guilty of professional misconduct and, as a result, fined \$50,000 and suspended from membership for six months.
6. THAT Mr. Howe 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. Howe.
7. THAT, in the event Mr. Howe fails to comply with the requirement of paragraph 2 of this Order, 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 24th DAY OF SEPTEMBER, 1996
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Michael Norman Howe

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **MICHAEL NORMAN HOWE, CA**, a member of the Institute, under **Rules 202 and 206** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE SEPTEMBER 5, 1996

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on September 4 and 5, 1996.

The professional conduct committee was represented by its counsel, Mr. Paul Farley, who was assisted by Ms. Christine O'Donohue. The member, Mr. Michael Howe, was present and represented by his counsel, Mr. Edgar Sexton, who was assisted by Mr. Aleck Dadson.

The professional conduct committee had laid two charges against Mr. Howe. Charge No. 1 was that while he was the partner responsible for the expression of an opinion on the financial statements of Standard Trustco Limited, Standard Trust Company and Standard Loan Company for the year ended December 31, 1989, Mr. Howe failed to perform his professional services with due care, contrary to Rule 202 of the rules of professional conduct. Charge No. 2 was that during the same period and pertaining to the same financial statements as outlined in Charge No. 1, Mr. Howe did not perform his professional services in accordance with generally accepted standards of practice of the profession, including the recommendations set out in the *CICA Handbook*, contrary to Rule 206 of the rules of professional conduct.

Each charge set out 28 particular ways in which it was alleged that Rule 202 and Rule 206 had been breached. The particulars asserted with respect to Charge No. 1 were identical to the particulars asserted with respect to Charge No. 2. At the commencement of the hearing, counsel for the professional conduct committee, with the consent of the member, withdrew nine of the particulars of each charge, namely those particulars set out as (a), (c), (e), (f), (k), (l), (o), (s) and (u). The amended charges were filed and marked as an exhibit.

Mr. Howe pleaded not guilty to the charges as amended.

The Decision and Order of the discipline committee has been given to both parties. These are the reasons for the Decision and Order.

PROCEDURE FOLLOWED

As a preliminary matter, counsel for the professional conduct committee outlined the procedure he and counsel for the member proposed the discipline committee adopt to hear this case. In essence, the proposal was that the professional conduct committee would call one witness, its investigator, who would file a document brief together with a summary of his evidence, that Mr. Farley would lead him through his evidence, and that he would not be cross-examined by Mr. Sexton. Counsel for the professional conduct committee would then make submissions with respect to guilt. Counsel for the member would not call evidence with respect to guilt or innocence, or make submissions in that regard.

It was apparent that this way of proceeding would save many hearing days. The discipline committee decided to follow the procedure suggested, with the proviso that we would ask questions or seek clarification as we thought necessary. Shortening a hearing is desirable, but not at the expense of understanding the evidence or the issues. In this case, counsel for the parties had had many months to review the facts and become thoroughly familiar with the case. But as the discipline committee was hearing the evidence and reviewing the documents for the first time, we made it clear that we would take the time required to understand the evidence.

The professional conduct committee called its investigator, Mr. Eric Johnston, FCA, who filed a summary of his evidence and a three-volume document brief. He gave his evidence with specific and detailed reference to the relevant documents until the discipline committee expressed confidence that it understood the relationship between the summary and the documents, and understood the substance of his testimony. Mr. Farley then led Mr. Johnston through the remainder of his evidence somewhat more quickly.

Counsel for the member did not cross-examine Mr. Johnston, and the first day of the hearing concluded with his evidence-in-chief. The members of the discipline committee took the opportunity over the evening and early following morning to review the written summary of evidence and the documents which had been filed. Prior to the start of the second day of the hearing, the committee met, and, after discussion, decided there were some questions we thought should be asked. The questions were asked on our behalf by counsel to the discipline committee when the hearing resumed.

Mr. Farley then made submissions with respect to the issue of whether or not Mr. Howe was guilty as charged. In accordance with the agreement reached between counsel, Mr. Sexton did not make submissions.

DETERMINATION OF GUILT OR INNOCENCE

During our deliberations we noted that Charge No. 1, under Rule 202, referred only to a lack of due care, whereas Rule 202 reads:

A member or student shall perform his or her professional services with integrity and due care.

We raised with counsel to the discipline committee the question of whether or not the prosecution had to prove both a lack of integrity and a lack of due care. It was his preliminary view that the "and" appeared to be conjunctive rather than disjunctive, and that, accordingly, the prosecution should allege and prove both a lack of integrity and a lack of due care in order to prove a charge under Rule 202. We requested counsel to raise this question with counsel for the parties, and ask if they wished to make submissions with respect to the issue before the discipline committee's counsel gave his final advice on the record. In the meantime, we proceeded with our deliberations with respect to Charge No. 2, laid under Rule 206. After considering the evidence, we found that the allegations set out as particulars (b), (d), (h), (i), (n), (p), (q), (t), (v), (x), (z) and (bb) of Charge No. 2 had been proven. We were then advised that, rather than make submissions concerning the question raised about Rule 202, the professional conduct committee proposed to withdraw the first charge. When the hearing reconvened, Charge No. 1 was withdrawn.

With respect to the second charge, the charge under Rule 206, the discipline committee determined that the cumulative effect of the twelve particulars which were proven amounted to a breach of the rule and constituted professional misconduct. The departure from the accepted standard of practice was significant. While the particulars, taken individually, may not have

supported a finding of professional misconduct, the twelve proven particulars, taken together, required that a finding of professional misconduct be made. The entity being audited was a large financial institution, and the audit required a sophisticated approach and the performance of substantial auditing services. In these circumstances, lapses in judgment such as accepting without sufficient evidence the representations of management, or failing to obtain adequate audit evidence, or failing to adequately assess the audit evidence - all of which occurred in this case - constituted a clear breach of the rule. Accordingly, Mr. Howe was found guilty of Charge No. 2.

SANCTIONS

Counsel for the professional conduct committee and counsel for the member made a joint submission with respect to sanction. The joint submission proposed that the appropriate order would be:

- X a written reprimand;
- X a requirement to take three professional development courses;
- X a fine of \$30,000.00;
- X a suspension from membership for 6 months; and
- X notification of the Decision and Order, disclosing the member's name, to the Public Accountants Council for the Province of Ontario, to the Canadian Institute of Chartered Accountants, and by publication in *CheckMark*.

Mr. Farley, on behalf of the professional conduct committee, referred to the three general principles which govern the imposition of sanction. He outlined the reasons for the suggested sanction with reference to the principles of general deterrence, specific deterrence and rehabilitation, as well as with reference to cases which had been decided in the past.

Mr. Sexton confirmed that the submissions with respect to sanction were joint submissions, and pointed out, as had Mr. Farley, that there was never any question of moral turpitude or personal gain on Mr. Howe's part. Further, he submitted, there were mitigating circumstances, such as that Mr. Howe and his firm had cooperated fully throughout the professional conduct committees investigation, and that the procedure adopted at the hearing minimized the length of the hearing, which, if it had been actively defended, would have taken in excess of 20 days.

When we began to deliberate with respect to the appropriate sanction, it became apparent that we had reservations about three provisions of the suggested sanction. First, it was not clear to us that Mr. Howe needed the benefit of professional development courses. Secondly, it was not readily apparent that the amount of the fine was adequate. Finally, we had a concern that the notice proposed would not adequately notify the public that the auditor of Standard Trust had been disciplined by the Institute. Counsel to the discipline committee was advised of these concerns so that he could make them known to counsel for the parties. When the hearing reconvened, the parties counsel made submissions with respect to the concerns raised.

After considering the submissions of counsel, and upon further deliberation, we made the following order:

ORDER

IT IS ORDERED in respect of Charge No. 2:

1. THAT Mr. Howe be reprimanded in writing by the chair of the hearing.

2. THAT Mr. Howe be and he is hereby fined the sum of \$50,000, 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. Howe 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. Howes 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 notice of this Decision and Order, not disclosing Mr. Howes name, be published in The Globe and Mail, such notice to state that the auditor of Standard Trustco Limited, Standard Trust Company and Standard Loan Company for the fiscal year ended December 31, 1989, was found guilty of professional misconduct and, as a result, fined \$50,000 and suspended from membership for six months.
6. THAT Mr. Howe 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. Howe.
7. THAT, in the event Mr. Howe fails to comply with the requirement of paragraph 2 of this Order, 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.

In any case where the discipline committee makes a determination of guilt it is important to fit the sanction to the misconduct. This requires a conscious comparison of the misconduct and the member in the present case with the misconduct and the member in past cases.

In this case we concluded that the principles which should govern the imposition of sanction are general and specific deterrence. We did not think Mr. Howe was in need of rehabilitation in the sense that he had to be educated or requalified in a particular area. The charge of which he was found guilty is serious in nature, and reflects on the credibility of the profession in the area of audit skills and standards. But the evidence did not support a finding that the mistakes were the result of a lack of understanding of the standards of practice.

Determining a sanction which will act as a general and specific deterrent is seldom an easy task. It was not in this case. The deterrent effect is achieved by the order as a whole, including suspension, fine and notice. The most difficult aspect of this case was the amount of the fine.

Reprimand

The discipline committee is of the view that a reprimand is necessary as a specific deterrent to the member to stress to him that his conduct was not acceptable for a chartered accountant.

Fine

The significance of the departure from the accepted standards of practice of the profession, and the cumulative nature of the failures, have been referred to above. The entity being audited was a major financial institution which had the right to receive deposits from the public and issue investment certificates. The size and complexity of the audit required sophisticated and substantial professional services. These factors would be reflected in the audit fee, which is not an irrelevant consideration, in that a fine should not be, and should not be seen to be, a licence fee. In the circumstances of this case, we concluded that a fine of \$50,000, combined with the other provisions of the order, would constitute an appropriate specific deterrent to Mr. Howe and general deterrent to the profession.

Suspension

A suspension is necessary as both a specific deterrent to the member and a general deterrent to the membership.

Professional Development Courses

The discipline committee saw no evidence that Mr. Howe needed the benefit of the professional development courses which it was suggested he take. The charges laid were with respect to one set of financial statements for one client. There was no evidence or suggestion that there was a problem with any other work or any other client. Even the audit which gave rise to the charges was well planned and properly supervised, according to the investigator.

Notice

The discipline committee ordered that notice of its Decision and Order be made in the manner specified as a specific and general deterrent. The desired deterrent effect will not be achieved unless notice of the Order is given. There were no rare or unusual circumstances present in this case that would warrant the withholding of the member's name from the publication of the notice to the membership.

The failure of Standard Trust received significant coverage in the financial press, and even in the general media. The public is aware of the failure of the company, and the financial community, if not the public generally, is aware that allegations had been made that the auditor's work was deficient. We think it important to let the public know that the Institute takes action against auditors who fail to meet their professional obligations. We concluded that

publication in *The Globe and Mail*, without mentioning the member's name or the name of his firm, would achieve this result.

While the discipline committee declined to draft the newspaper notice, or to consult with the member about it prior to publication, we have now received from the discipline committee secretary a proposed notice that we think is appropriate, and attach a copy of it as an appendix to these reasons.

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

D.P. SETTERINGTON, CA - DEPUTY CHAIR

THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

E.R. ARCHIBALD, CA

P.B.A. CLARKSON, CA

L.R. FLEMMING, CA

B.A. YOUNG, PEng (Public representative)

**APPENDIX TO THE REASONS OF THE DISCIPLINE COMMITTEE
IN THE CASE OF
MICHAEL NORMAN HOWE**

PROPOSED NOTICE IN *THE GLOBE AND MAIL*

The discipline committee of the Institute of Chartered Accountants of Ontario has found the auditor who expressed an opinion on the financial statements of Standard Trustco Limited, Standard Trust Company and Standard Loan Company for the year ended December 31, 1989, guilty of professional misconduct for not performing his professional services in accordance with generally accepted standards of practice of the profession. He has been fined the sum of \$50,000 and suspended from membership in the Institute for a period of six months.

The Institute of Chartered Accountants of Ontario is the governing body of chartered accountants in the province, and, among other things, is responsible for enforcing standards of competence and conduct in the interests of the public and the profession.