

Michael Hacket Murnaghan: Summary, as Published in *CheckMark*

Michael Hacket Murnaghan, of Toronto, was found guilty of one charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest, one charge under Rule 202 of failing to perform his professional services with integrity and due care, and two charges under Rule 205 of signing or associating himself with statements which he knew or should have known were false or misleading. While acting as a trustee, Mr. Murnaghan made unauthorized investments of \$750,000 US of the trust's funds in a highly speculative venture which he knew or should have known was high risk and imprudent, without ensuring that the funds were adequately secured. He then prepared statements of tax trust transactions that overstated the amount of money in term deposits by \$750,000 US, when he knew these funds had been withdrawn from the trust's account. Mr. Murnaghan was fined \$10,000 and expelled from the Institute.

CHARGE(S) LAID re: Michael Hackett Murnaghan, CA

The Professional Conduct Committee hereby makes the following charges against Michael Hackett Murnaghan, CA, a member of the Institute:

1. THAT, the said Michael H. Murnaghan, CA, in or about the period November 1995 to April 1996, while he was trustee of the Werner Erhard Tax Trust, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that he invested \$750,000 (U.S. dollars) of the trust's funds in a venture which he knew or should have known was high risk and imprudent and not authorized by his discretionary investment powers under the terms of the trust, contrary to Rule 201.1 of the rules of professional conduct.
2. THAT, the said Michael H. Murnaghan, CA, in or about the period November 1995 to April 1996, while he was trustee of the Werner Erhard Tax Trust, failed to perform his professional services with due care and integrity, in that he invested \$750,000 (U.S. dollars) of the trust's funds in a highly speculative venture without ensuring that the funds were adequately secured, contrary to Rule 202 of the rules of professional conduct.
3. THAT, the said Michael H. Murnaghan, CA, in or about the period November 1995 to March 1996, while he was trustee of the Werner Erhard Tax Trust, signed or associated himself with a statement which he knew or should have known was false or misleading, in that he prepared a statement of Tax Trust Transactions which stated that the trust had \$825,000 (U.S. dollars) in term deposits as at November 30, 1995, and \$827,176.42 (U.S. dollars) in term deposits as at December 31, 1995, when he knew that \$750,000 (U.S. dollars) was withdrawn from the trust's account on or about November 30, 1995, and that the statement of Tax Trust Transactions therefore overstated the amount of money in term deposits by \$750,000 (U.S. dollars) more or less, contrary to Rule 205 of the rules of professional conduct.
4. THAT, the said Michael H. Murnaghan, CA, in or about the period January 1996 to April 1996, while he was trustee of the Werner Erhard Tax Trust, signed or associated himself with a statement which he knew or should have known was false or misleading, in that he prepared a statement of Tax Trust Transactions which stated that the trust had \$827,176.62 (U.S. dollars) in term deposits as at January 31, 1996, February 28, 1996 and March 31, 1996, when he knew that \$750,000 (U.S. dollars) was withdrawn from the trust's account on or about November 30, 1995, and that the statement of Tax Trust Transactions therefore overstated the amount of money in term deposits by \$750,000 (U.S. dollars) more or less, contrary to Rule 205 of the rules of professional conduct.

Dated at Toronto this 9th day of September, 1999.

MICHAEL CONNOLLY, FCA – DEPUTY CHAIR

PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Michael Hacket Murnaghan

DECISION AND ORDER IN THE MATTER OF: The charges against **MICHAEL HACKETT MURNAGHAN, CA**, a member of the Institute, under **Rules 201.1, 202 and 205**, of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE MARCH 30, 2001

DECISION

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Michael Hackett Murnaghan guilty of charges Nos. 1, 2, 3 and 4.

ORDER

IT IS ORDERED in respect of charges Nos. 1, 2, 3 and 4:

1. THAT Mr. Murnaghan be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Murnaghan be and he is hereby fined the sum of \$10,000, 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. Murnaghan be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Murnaghan'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. Murnaghan 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 4TH DAY OF APRIL, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Michael Hacket Murnaghan

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: The charges against **MICHAEL HACKETT MURNAGHAN, CA**, a member of the Institute, under **Rules 201.1, 202 and 205**, of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE MARCH 30, 2001

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on March 29 and 30, 2001 to hear evidence concerning charges brought by the professional conduct committee against Michael Hackett Murnaghan.
2. The professional conduct committee was represented by Mr. Brian Bellmore, who was accompanied by Mr. Ray Harris, the investigator appointed by the professional conduct committee. Mr. Murnaghan was present at the hearing but was not represented by counsel. Mr. Murnaghan acknowledged he had the right to be represented by counsel.
3. The hearing concluded on March 30, 2001 and the panel's decision and order was issued on April 4, 2001. These reasons, issued in writing pursuant to Bylaw 574, set out the panel's decision and order and the charges made by the professional conduct committee.

THE CHARGES AND THE PLEA

4. The charges dated September 9, 1999 which were filed as an exhibit at the hearing read as follows:
5. THAT, the said Michael H. Murnaghan, CA, in or about the period November 1995 to April 1996, while he was trustee of the Werner Erhard Tax Trust, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that he invested \$750,000 (U.S. dollars) of the trust's funds in a venture which he knew or should have known was high risk and imprudent and not authorized by his discretionary investment powers under the terms of the trust, contrary to Rule 201.1 of the rules of professional conduct.
6. THAT, the said Michael H. Murnaghan, CA, in or about the period November 1995 to April 1996, while he was trustee of the Werner Erhard Tax Trust, failed to perform his professional services with due care and integrity, in that he invested \$750,000 (U.S. dollars) of the trust's funds in a highly speculative venture without ensuring that the funds were adequately secured, contrary to Rule 202 of the rules of professional conduct.
7. THAT, the said Michael H. Murnaghan, CA, in or about the period November 1995 to March 1996, while he was trustee of the Werner Erhard Tax Trust, signed or associated himself with a statement which he knew or should have known was false or misleading, in that he prepared a statement of Tax Trust Transactions which stated that the trust had \$825,000 (U.S. dollars) in term deposits as at November 30, 1995, and \$827,176.42 (U.S. dollars) in term deposits as at December 31, 1995, when he knew that \$750,000 (U.S. dollars) was withdrawn from the trust's account on or about November 30, 1995,

and that the statement of Tax Trust Transactions therefore overstated the amount of money in term deposits by \$750,000 (U.S. dollars) more or less, contrary to Rule 205 of the rules of professional conduct.

8. THAT, the said Michael H. Murnaghan, CA, in or about the period January 1996 to April 1996, while he was trustee of the Werner Erhard Tax Trust, signed or associated himself with a statement which he knew or should have known was false or misleading, in that he prepared a statement of Tax Trust Transactions which stated that the trust had \$827,176.62 (U.S. dollars) in term deposits as at January 31, 1996, February 28, 1996 and March 31, 1996, when he knew that \$750,000 (U.S. dollars) was withdrawn from the trust's account on or about November 30, 1995, and that the statement of Tax Trust Transactions therefore overstated the amount of money in term deposits by \$750,000 (U.S. dollars) more or less, contrary to Rule 205 of the rules of professional conduct.

Mr. Murnaghan entered a plea of not guilty to all the charges.

THE PROCEEDINGS WITH RESPECT TO THE CHARGES

In accordance with the usual procedure, the professional conduct committee had the opportunity to present its case and the member had the opportunity to cross-examine. When the professional conduct committee had concluded its case, the member had the opportunity to present his case and counsel for the professional conduct committee had the opportunity to cross-examine.

There were two departures from the usual procedure. The first departure was that in presenting his case, Mr. Murnaghan first read and then filed as an exhibit an eight-page letter with attachments which set out his position. Mr. Murnaghan contended that he had acted within the terms granted him by the trust document, and stated that he categorically denied that he had acted in a manner deserving any professional opprobrium or discipline. Unfortunately, matters turned out badly, but in his opinion trustees are not to be considered as guarantors of any investment. He denied he was acting as a chartered accountant with respect to the matters which were the subject of these proceedings, and accordingly said the Institute had no jurisdiction to deal with him.

The second departure from the usual practice was that Mr. Murnaghan did not attend on the second day of the hearing. The evidence concluded at the end of the first day, and although Mr. Murnaghan was urged by the chair to be present the next morning, he did not attend. In the summer of 1999, Mr. Murnaghan suffered a cerebral hemorrhage and had emergency neurosurgery. The hearing on the charges was delayed because Mr. Murnaghan had not sufficiently recovered his health. Mr. Murnaghan said the hearing was very difficult for him. The hearing which was adjourned until 10:00 a.m. on March 30 did not proceed until after 10:15 a.m. in the hope that Mr. Murnaghan would attend.

There were not many facts in dispute in this case. With respect to the decision on the charges, we have summarized the relevant facts and the positions of the parties before setting out our finding and giving the reasons for our decision.

The Relevant Facts

The relevant facts were not disputed. The document brief of 90 sections consists of documents which for the most part came from Mr. Murnaghan's files. Mr. Bellmore reviewed some of the documents in considerable detail, in particular the Werner Erhard Tax Trust agreement, Royal Bank account statements for the trust from December 1993 to June 1996, statements titled Tax

Trust Transactions prepared by Mr. Murnaghan, and documents relating to a limited joint venture agreement. On January 3, 1994, Mr. Murnaghan was appointed sole trustee of the Werner Erhard Tax Trust.

The terms of the Werner Erhard Tax Trust contained instructions to the trustee to hold and accumulate trust property, and to distribute amounts in accordance with paragraph 3 of the trust agreement. Basically, money not required to pay income tax was to be paid to a secured creditor. In addition, the trust document provided the trustee with wide powers regarding investments. In particular, paragraph 4(f) read as follows:

- (f) to invest and reinvest (or leave temporarily uninvested) any funds in any Trust property, real or personal, of any kind or nature, including, without limitation, stocks (whether common, preferred, or otherwise), bonds (secured or unsecured), obligations, deeds of trust, mortgages, other securities, and interests in any of the foregoing without regard to any law or rule of court prescribing or restricting investments for fiduciaries;

On December 24, 1993, Mr. Murnaghan opened a U.S. dollar account with the Royal Bank in the name of Michael Murnaghan, Chartered Accountant, in Trust for Werner Erhard Tax Trust. Funds were received by the trust, and up until May 31, 1995 surplus monies were invested in term deposits. As at May 31, 1995, there were term deposits of US\$440,000 held in the name of the trust. Subsequent to that date, most of the term deposits were not renewed when they came due so that by the end of October 1995, the assets of the trust consisted of cash in the amount of US\$444,216 and one term deposit of US\$75,000. On November 15, 1995, a further US\$359,065 was received raising the amount of cash to US\$803,281.

In the fall of 1995, Mr. Murnaghan met with representatives of Titan International Investors Trust Inc. ("Titan") concerning a joint venture programme which purported to yield a 500% profit over 60 days.

The details of the 60-day programme were quite elaborate. In order to protect the identity of where his funds were coming from, Mr. Murnaghan utilized Era Nueva Ltd., a company owned by him in the British West Indies, to make the investment in the programme. This company, in turn, became a client of Titan which signed a joint venture agreement and a non-disclosure/non-circumvention agreement on behalf of Era Nueva Ltd. and other clients. The non-disclosure/non-circumvention agreement effectively prohibited the investors from obtaining information concerning the entities with whom the funds would be placed.

Mr. Murnaghan knew and trusted the people at Titan, and he testified that he relied on their honesty and integrity and their ability to carry out the necessary due diligence with respect to the ultimate recipients of the money.

Era Nueva Ltd. has an address at Finbar Dempsey & Company on Grand Turk in the British West Indies. Mr. Finbar Dempsey is a director of the company and a lawyer. The joint venture agreement made no reference to Era Nueva acting as, by or for a trustee.

Mr. Murnaghan testified that he satisfied his obligation of due diligence by asking Mr. Finbar Dempsey to review the contracts and make sure that they were complete.

On November 22, 1995 Mr. Murnaghan purchased a money order for US\$750,000 payable to the order of Era Nueva Ltd. On or about November 30, 1995, Mr. Murnaghan caused US\$750,000 of the Tax Trust Funds to be transferred through Era Nueva Ltd. to the joint venture programme.

While documents and correspondence indicated that any amounts received from investors would be covered by bank guarantees as security, in fact, no guarantees were obtained and, through a series of transactions, the original investment of US\$750,000 simply disappeared. Efforts to find the money have not been successful.

Mr. Murnaghan received monthly statements from the Royal Bank. The relevant part of the statement for the period October 31 to November 30, 1995 is set out below:

Date	Transaction Description	Cheques & Debits	Deposits & Credits	Balance
Nov 15	Balance Forward Funds Transfer Cr TT LANDMARK EDU		19,593.00	444,215.66
Nov 22	Funds Transfer Cr TT LANDMARK EDU Foreign Exchange REF 3JNF03261605030	\$750,000.00	339,472.00	803,280.66
Nov 30	Deposit Funds Transfer AUROUS LIMITED	750,031.69	750,000.00	53,280.66
				53,248.97

Mr. Murnaghan prepared quarterly statements entitled Tax Trust Transactions. The statement for the quarter ending December 31, 1995 reads:

TAX TRUST TRANSACTIONS

	IN A/C	TERM DEP	TOTAL
BALANCE AS AT SEPTEMBER 30, 1995	428,730.66	75,000.00	503,730.66
OCTOBER 13, 1995 SERVICE CHARGE	15,495.00 (10.00)		
BALANCE AS AT OCTOBER 31, 1995	444,215.66	75,000.00	519,215.66
NOVEMBER 15, 1995 SERVICE CHARGE	19,603.00 (10.00)		
NOVEMBER 15, 1995 SERVICE CHARGE	339,482.00 (10.00)		
DEPOSIT SERVICE CHARGE	(750,000.00) (31.69)	750,000.00	
BALANCE AS AT NOVEMBER 30, 1995	53,248.97	825,000.00	878,248.97
DECEMBER 15, 1995 SERVICE CHARGE	16,788.00 (10.00)		

TERM DEPOSIT INTEREST		2,176.42	
BALANCE AS AT DECEMBER 31, 1995	70,026.97	827,176.42	897,203.39

The Tax Trust Transactions statement for the three months ending March 31, 1996 show under the column "TERM DEP" the sum of US\$827,176.62.

In April of 1996, when arranging for the 1995 tax to be paid, Mr. Murnaghan spoke with Mr. Leaf, of the law firm Morrison, Cohen, Singer & Weinstein LLP of New York, New York, and raised for the first time with a representative of the Erhard Trust the problem with the US\$750,000, the problem being the money seemed to have disappeared. Mr. Leaf flew to Toronto and Mr. Murnaghan resigned as a trustee on April 11, 1996 at Mr. Leaf's request.

Mr. Murnaghan acknowledged in his evidence that as a trustee he was required to act reasonably and with prudence with respect to investment decisions and that he was obliged to keep accurate records.

The evidence before the discipline committee was that the US\$750,000 has not been recovered and will not be recovered.

The Position of the Professional Conduct Committee

With respect to the first two charges under Rule 201.1 and Rule 202, it was the position of the professional conduct committee that Mr. Murnaghan was guilty as:

- (a) he acted recklessly rather than prudently as he was required to act;
- (b) he did not consult with Mr. Erhard or any other representative of the trust or disclose to the trust at the relevant time the nature of the investment he was about to make or did make;
- (c) he violated the provisions of the trust agreement, in particular paragraph 4(f), in that, while he was given wide discretion with respect to investments, what he did could not be called an investment;
- (d) he failed to ascertain who the ultimate recipients of the money would be and made no efforts to ensure that they were honest and competent; and
- (e) he entered into the joint venture knowing there was a non-disclosure/non-circumvention provision, which would preclude him from fulfilling his fiduciary duty to act reasonably and prudently.

With respect to the third and fourth charges, the position of the professional conduct committee was that both statements, the first for the quarter ending December 1995, and the second for the three month period ending March 1996, were clearly false and misleading.

The Position of the Member

Mr. Murnaghan contended that he was not acting as a chartered accountant, and that accordingly the rules of professional conduct did not apply to him and the discipline committee did not have jurisdiction to deal with the charges.

With respect to the charges, Mr. Murnaghan said that:

- (a) the trust agreement provided him with unlimited discretion regarding the nature of investments he could make and he acted within the unlimited discretion he was given;
- (b) he carried out the appropriate due diligence because this was a contractual matter and he had a lawyer ensure that the contracts were complete;
- (c) Titan was known to him and he satisfied any due diligence obligation he had with respect to the use of funds by relying on Titan;
- (d) the statement of tax trust transactions prepared by him was not a financial statement and was nothing more than a summary of transactions passing through the bank account. It was an internal document not intended to be relied upon by anyone, including third parties, and his name was not attached to it in any manner, least of all in his capacity as a chartered accountant.

DECISION ON THE CHARGES

The first issue this panel of the discipline committee had to deal with was the issue of jurisdiction raised by Mr. Murnaghan. Mr. Murnaghan was engaged in professional activities as a chartered accountant, as the bank statements make clear. Further, he acknowledged that his first dealings with Mr. Erhard and his group were as a chartered accountant. While the substantial fees earned by Mr. Murnaghan were billed through Michael Murnaghan Entertainment Inc., he was at all times a chartered accountant and therefore subject to the rules of professional conduct.

This panel, as other discipline panels have in the past, rejected the contention that a chartered accountant could purport to act other than as a chartered accountant and, accordingly, not be subject to the rules of professional conduct. This is particularly so when, as here, the member is identified as a chartered accountant in the professional activity which gives rise to the charges.

Charges Nos. 1 and 2

While these are two separate charges, the issues with respect to charges Nos. 1 and 2 are related and essentially arise from the same conduct.

Mr. Murnaghan was entrusted with US\$750,000 and cannot account for it. His explanation for much of his conduct between November 1995 and April 1996 was unusual if not bizarre. He said in his evidence that he was not sure that Mr. Leaf, the New York attorney, was a representative of Mr. Erhard, but he did take instructions from Mr. Leaf and resigned at his request. He also said in his testimony that he took instructions from a Mr. Cohen, whom he knew was not a member of the Morrison, Cohen law firm but whom he otherwise could not identify. The panel found this evidence less than credible.

But it was his conduct in 1995 and 1996 that was the central issue. Mr. Murnaghan acknowledged he had an obligation to act reasonably and prudently with respect to the investments. He said he trusted the people at Titan. But Titan's contract with the entity to which

it passed the funds, Double T Trust, had the non-disclosure/non-circumvention provision, and Mr. Murnaghan had no idea who the ultimate recipient of the money was going to be or whether they were competent or honest. On the evidence we heard, we could only conclude that Titan was not in a better position to make the appropriate enquiries than Mr. Murnaghan, or if it was, it did not make the appropriate enquiries.

If Mr. Murnaghan was seriously concerned with the completeness of the contracts, his obligation of due diligence would have required him to obtain an opinion from a qualified lawyer. Whether Mr. Dempsey, who is a director of Mr. Murnaghan's company, is a qualified lawyer or not may be an open question, but Mr. Murnaghan did not obtain a written opinion from him that the contracts were complete and appropriate for the purpose.

Mr. Murnaghan's explanation for the investment, the hope of earning 500% return and thereby increasing his fees, when he did not advise his client of the nature of the investment and sent inaccurate summaries of the transactions, makes it clear that he failed to uphold the good reputation of the profession and its ability to serve the public interest.

Mr. Murnaghan was a trustee. While he had wide discretion, there was no doubt, as he admitted himself under cross-examination, that he had a duty to act reasonably and with prudence. He did neither, and as a result the trust lost US\$750,000. Mr. Murnaghan's conduct fell far below the required standard and he was found guilty of both charges.

Charges Nos. 3 and 4

With respect to charges Nos. 3 and 4, Mr. Murnaghan himself acknowledged under cross-examination that he was responsible for keeping accurate records. He also acknowledged that the heading "TERM DEP" on the Tax Trust Transactions for the periods ending December 31, 1995 and March 31, 1996 was inaccurate. This was no minor inaccuracy. The sum of US\$750,000 was shown as being in a term deposit when in fact the best that could be said about it at the end of December 1995 was that it had been invested in a speculative venture, and the best that could be said about it at the end of March 1996 was that it had apparently disappeared.

The Tax Trust Transaction statements were passed on to the representatives of the Erhard Trust by Mr. Murnaghan. He not only associated himself with false and misleading statements, he made them. Accordingly, Mr. Murnaghan was found guilty of charges Nos. 3 and 4.

Charges Nos. 1, 2, 3 and 4

The difference between the information set out in the bank statements (paragraph 20 above) and the information which Mr. Murnaghan set out and passed on to representatives of the trust (paragraph 21 above) is both substantial and readily apparent. When the discrepancy is considered with the knowledge that it was Era Nueva, Mr. Murnaghan's company, which entered into the joint venture with no mention that it was acting as or for a trustee, it is apparent that the statements are false and misleading, that Mr. Murnaghan did not act with integrity, and that his conduct did not uphold the good reputation of the profession. A chartered accountant who accepts the obligations of a trustee, even where there is a wide discretion, simply cannot do what Mr. Murnaghan purported to do. The issue of whether or not he breached his fiduciary obligations and what liability follows is for the courts and not for the discipline committee. What he did is clearly contrary to the rules of professional conduct and the fundamental obligations of a chartered accountant who undertakes to act for another person.

When the panel concluded its deliberations the hearing resumed and the following decision was read into the record:

DECISION

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Michael Hackett Murnaghan guilty of charges Nos. 1, 2, 3 and 4.

SANCTION

Mr. Bellmore did not call evidence with respect to sanction, and Mr. Murnaghan was not present to address the issue.

In his submissions as to sanction, Mr. Bellmore said that the focus of the order requested by the professional conduct committee was on the ultimate deterrent, i.e. expulsion. The professional conduct committee took a very serious view of the breach of trust and the lack of integrity with which Mr. Murnaghan deliberately misled his client. From his evidence, it was clear that Mr. Murnaghan did not believe or understand that he had done anything wrong. Thus, expulsion was required.

Mr. Bellmore submitted that for the protection of the public the sanction should consist of expulsion, publication, and a fine in an amount at the discretion of the discipline committee.

Upon being requested by the panel to provide further information that would help in its deliberations, Mr. Bellmore requested a fine in the range of \$7,500 to \$25,000, suggesting that the appropriate amount would lie at the high end of the range. Mr. Murnaghan's client had suffered considerable loss and the quantum of the fine should reflect this.

Mr. Bellmore further noted that in the *Birnbaum* case the member had been expelled and fined \$25,000, and in the *Quon* case the member had been expelled and fined \$15,000.

After further deliberation, the panel made the following order:

ORDER

IT IS ORDERED in respect of charges Nos. 1, 2, 3 and 4:

1. THAT Mr. Murnaghan be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Murnaghan be and he is hereby fined the sum of \$10,000, 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. Murnaghan be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Murnaghan'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. Murnaghan 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

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 charges and the unacceptability of his conduct as a chartered accountant.

Fine

The professional conduct committee gave a very wide range for the amount of the requested fine. The panel did not think that the cases cited were strictly comparable, and concluded that a fine of \$10,000 would be appropriate in this case. We did not have the benefit of real evidence as to Mr. Murnaghan's financial position. His health has not been good and he said he did not have a lucrative practice or any substantial savings. While the evidence was somewhat unsatisfactory, we concluded that \$10,000 would be a very substantial fine for Mr. Murnaghan. It was imposed as a general deterrent.

Expulsion

The profession will not tolerate a lack of due care and integrity on the part of its members. Mr. Murnaghan displayed gross negligence as a trustee of the Werner Erhard Tax Trust. Without telling his client, he invested US\$750,000 in an obviously dubious venture, and did not even carry out any due diligence checks. He then deliberately misled his client and others as to the true whereabouts of the funds.

Members of the Institute must understand that if they breach the trust of a client, then display complete lack of integrity by further misleading the client, they will face expulsion from membership.

Notice

Publication of the decision and order, disclosing Mr. Murnaghan's name, is, in the opinion of the discipline committee, a general deterrent. It is important to demonstrate to both other members of the profession and to the public that the profession is regulating itself, and that failure on the part of members to comply with the rules of professional conduct will result in the imposition of serious sanctions.

Certificate of Membership

As in all cases of expulsion, it is important that Mr. Murnaghan surrender his certificate of membership in the Institute to which he is no longer entitled.

Immediate Suspension

Bylaw 583 provides that, subject to the discretion of the panel hearing the case, when the discipline committee orders a member to be expelled the member's rights and privileges of membership in the Institute are suspended from the time the expulsion order is pronounced. The panel concluded that there was no reason why Bylaw 583 should not apply in this case.

DATED AT TORONTO THIS 8TH DAY OF MAY, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

P.B.A. CLARKSON, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

H.B. BERNSTEIN, CA
G.R. PEALL, CA
R.D. WHEELER, FCA
G. BECK (Public representative)