

Michael Edward Waller: Summary, as Published in *CheckMark*

Michael Edward Waller, of London, was found guilty of a charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest, arising out of his criminal conviction for fraud. While the chief financial officer of a hospital foundation, Mr. Waller misappropriated approximately \$71,000 from his employer. He was fined \$10,000 and expelled from the Institute.

CHARGE(S) LAID re Michael Edward Waller

The Professional Conduct Committee hereby makes the following charge against Michael E. Waller, CA, a member of the Institute:

1. THAT, the said Michael E. Waller failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that, on or about the 10th day of May, 1999, at the City of London, in the Province of Ontario, he was convicted of an offence under the Criminal Code, namely that, during the period between September 26th 1996 and the 21st day of May 1998 at the City of London, Ontario he did by deceit, falsehood or other fraudulent means, defraud London Health Sciences Foundation, in London, Ontario of money in excess of \$5,000. contrary to section 380 (1)(a) of the Criminal Code of Canada, all of which is contrary to Rule 201.1 of the rules of professional conduct.

DATED at Toronto this 9th day of September 1999.

DOUGLAS BOUFFORD, CA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Michael Edward Waller

DECISION AND ORDER IN THE MATTER OF: A charge against **MICHAEL EDWARD WALLER**, a suspended member of the Institute, under **Rule 201.1**, of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE DECEMBER 15, 1999

DECISION

THAT, having seen and considered the evidence, the Discipline Committee finds Michael Edward Waller guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Waller be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Waller be and he is hereby fined the sum of \$10,000, to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Waller be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Waller'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 London Free Press*.
5. THAT Mr. Waller 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 21ST DAY OF DECEMBER, 1999

DISCIPLINE COMMITTEE re Michael Edward Waller

REASONS FOR DECISION AND ORDER IN THE MATTER OF: A charge against **MICHAEL EDWARD WALLER**, a suspended member of the Institute, under **Rule 201.1**, of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE DECEMBER 15, 1999

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on December 15, 1999 to hear evidence concerning a charge brought by the professional conduct committee against Michael Edward Waller.

The professional conduct committee was represented by Mr. Paul Farley. The member was present without the benefit of legal counsel. He acknowledged that he was aware of his right to be represented by counsel, and that he had been made aware of this right prior to the hearing.

The hearing concluded on December 15, and the panel's decision and order was issued on December 21, 1999. These reasons, issued in writing pursuant to Bylaw 574, contain the panel's decision and order, and the charge laid by the professional conduct committee, as well as the reasons of the panel.

DECISION ON THE CHARGE

The charge laid against Mr. Waller under Rule 201.1 reads as follows:

THAT, the said Michael E. Waller failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that, on or about the 10th day of May, 1999, at the City of London, in the Province of Ontario, he was convicted of an offence under the Criminal Code, namely that, during the period between September 26th 1996 and the 21st day of May 1998 at the City of London, Ontario he did by deceit, falsehood or other fraudulent means, defraud London Health Sciences Foundation, in London, Ontario of money in excess of \$5,000. contrary to section 380 (1)(a) of the Criminal Code of Canada, all of which is contrary to Rule 201.1 of the rules of professional conduct.

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

In presenting their respective cases, neither party called *viva voce* evidence. The professional conduct committee filed as an exhibit a document brief containing a certified copy of the criminal information against Mr. Waller, and the transcript of the criminal court proceeding, as well as a copy of a *London Free Press* article about him.

Mr. Waller was the chief financial officer of the London Health Sciences Foundation, with signing authority on all operating accounts. Due to reorganization and cutbacks at the

Foundation, Mr. Waller's salary was reduced approximately \$11,000, putting him and his family in a very difficult financial situation. To help make ends meet, Mr. Waller asked if he could take pay in lieu of vacation time he had accumulated over the years. When this was denied him, he decided he would pay himself for his unused vacation time. Then, discovering the ease with which he could make unauthorized payments to himself, he continued to misappropriate funds, ultimately taking more than \$71,000.

Based on the evidence, and Mr. Waller's plea of guilty, the panel reached the following decision on the charge:

DECISION

THAT, having seen and considered the evidence, the Discipline Committee finds Michael Edward Waller guilty of the charge.

ORDER AS TO SANCTION

The panel then proceeded to a determination of the appropriate sanction. Neither party called evidence with respect to sanction, but both made submissions.

Mr. Farley, on behalf of professional conduct committee, asked for the most serious sanction the discipline committee can impose, being expulsion. He submitted that the principles of general and specific deterrence required that Mr. Waller be expelled, and that, in addition, there should be a written reprimand, and a fine in the range of \$10,000 to \$15,000. Mr. Farley also asked for the usual order as to the giving of notice of the discipline committee's decision and order, including by way of publication in *CheckMark*, as well as for publication of notice of expulsion, in the event expulsion was ordered, in *The London Free Press* and *The Globe and Mail*.

Mr. Waller did not address the issues of expulsion, fine or reprimand, nor did he take exception to the proposed publication in *CheckMark*. He did ask, however, that the discipline committee not order newspaper publication because the notice itself, and the possibility of media coverage as a result of the notice, would cause further embarrassment and disruption to this family, especially his teenaged children.

After deliberation, the panel made the following order:

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Waller be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Waller be and he is hereby fined the sum of \$10,000, to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Waller be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Waller'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 London Free Press*.

5. THAT Mr. Waller surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

Reprimand

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

Fine

The panel did not hear any evidence of economic hardship to support a request that a fine not be levied, and felt that a fine sends a strong message to like-minded members, and acts as a demonstration to the public, of the profession's intolerance of the type of misconduct engaged in by Mr. Waller. The panel concluded that a \$10,000 fine was appropriate in this case.

Expulsion

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

Notice

Bylaw 575

Bylaw 575 requires that the discipline committee give notice of:

- a suspension, expulsion or restriction of a member's practice, to all other provincial institutes [Bylaw 575(6)];
- an expulsion, by publication in a newspaper distributed in the geographic area of the member's current or former practice, employment and/or residence, unless the committee determines that the circumstances of the case are of a nature that such notice is not necessary for the protection of the public and would be unfair to the member [Bylaw 575(3)];
- a suspension or expulsion, to every member of the Institute publication in *CheckMark*, although the committee has a discretion not to disclose the member's name [Bylaw 575(2) and (4)].

Discipline committee discretion

While Bylaw 575 gives the discipline committee wide discretion as to the manner in which notice of its decisions and orders may be given, the discretion not to give notice at all, or to withhold a member's name in a notice, is limited. The discretion not to publish notice of expulsion in a newspaper is limited to situations in which the discipline committee is satisfied that such notice is not necessary for the protection of the public and would be unfair to the member, in which case it must provide reasons in writing for its exercise of the discretion.

As to the withholding of a member's name from publication, previous discipline and appeal

committee decisions have made it clear that publication of disciplinary notices is an important and significant general deterrent, and that such notices must include members' names unless rare and unusual circumstances existing in a particular case warrant the withholding of the member's name.

Newspaper publication

Since Bylaw 575(3) came into effect into 1996, a number of members have asked that newspaper publication be withheld, as unnecessary to protect the public and as unfair to the member. The unfairness asserted in this case, as in most others, relates to the effect such publication will have on the member's spouse and, particularly, children. This argument is advanced with greater force when the proposed publication will be in a local newspaper in a smaller community than Toronto. Mr. Waller stated that, following the news coverage of the events that ultimately brought him before this panel, his children did not want to go to school. He fears that notice in *The London Free Press* will trigger further stories in the local media.

While the panel recognizes the force of Mr. Waller's argument, it is an argument that could be advanced by any member living in a smaller community, or any member who has a child. Even though the impact of newspaper publication will be greater on some members than others, the discipline committee does not consider it appropriate to have one rule for members who live in small towns and another rule for members who live in Toronto, or one rule for members with children and another rule for members without.

One of the reasons for publishing notices of expulsion in newspapers, particularly when there has been previous newspaper coverage, is to complete the information already made known, both to protect the public, and to confirm that the Institute is acting in the public interest through the regulation of the conduct of its members.

As difficult as it may be for Mr. Waller and his family, the panel does not think the circumstances of this case satisfy the requirements of Bylaw 575(3) for dispensing with newspaper publication of notice of expulsion.

Certificate

As is usual in cases involving expulsion, the panel ordered Mr. Waller to surrender his certificate of membership, to which he is no longer entitled.

DATED AT TORONTO THIS DAY OF MARCH, 2000
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

S.W. SALTER, CA
B.L. STEPHENS, CA
R.D. WHEELER, FCA
B.A. YOUNG (Public representative)
BY ORDER OF THE DISCIPLINE COMMITTEE

BRYAN W. STEPHENSON, BA, LLB

SECRETARY - DISCIPLINE COMMITTEE