

Owen Frederick Hewson Smith: Summary, as Published in *CheckMark*

Owen Frederick Hewson Smith, of Toronto, was found guilty by the discipline committee of two charges of professional misconduct, laid by the professional conduct committee, namely

- one charge, under Rule of Professional Conduct 202, of failing to perform his professional services with due care; and
- one charge, under Rule of Professional Conduct 206.2, of expressing an opinion on financial statements while failing to comply in all material respects with the generally accepted auditing standards of the profession.

The discipline committee ordered that Mr. Smith

- be reprimanded in writing by the chairman of the hearing;
- be fined \$20,000 and assessed costs of \$82,000, to be paid within a specified time;
- be suspended from membership in the Institute for a period of one year; and
- be required to take two specified professional development courses within a prescribed time.

Failure to comply with the second term of the order as set out above would have resulted in Mr. Smith's expulsion from membership. Mr. Smith has complied with the second term of the order as set out above. Failure to comply with the fourth term of the order as set out above will result in Mr. Smith's expulsion from membership.

Mr. Smith returned to MEMBERSHIP IN GOOD STANDING on February 17th, 1992

CHARGE(S) LAID re Owen Frederick Hewson Smith

The Professional Conduct Committee hereby makes the following charges against Owen F.H. Smith, CA, a member of the Institute:

1. THAT, the said Owen F.H. Smith, CA, in or about the period February 1987 through March 1988, while a partner with the firm Price Waterhouse Chartered Accountants, and more particularly the member engaged and partner responsible for the expression of an opinion on the consolidated financial statements of National Business Systems Inc. (NBS) for the year ended September 30, 1987, failed to perform his professional services with due care, contrary to Rule 202 of the rules of professional conduct, in that; after his firm, Price Waterhouse, had been appointed by the shareholders of NBS as the auditor for the year ended September 30, 1987, and knowing that the audit of NBS involved substantial audit risk:
 - a) ~~he failed to ensure, after having entered into an arrangement with Greenwood Cook & Co. and the management of NBS for Greenwood Cook & Co. to assume certain audit responsibilities, that there was in place adequate documentation to establish the relationship between Price Waterhouse and Greenwood Cook & Co. and their respective roles on the carrying out of the audit; (WITHDRAWN BY THE PCC BWS)~~
 - b) ~~after establishing the objective, scope and reporting requirements for the overall examination of the consolidated financial statements of NBS which he set out in the "International Examination Guide for the year ending September 30, 1987" and in the "Audit Planning Memorandum for the year ending September 30, 1987", he released an unqualified audit report with respect to the financial statements, dated December 28, 1987, without having received any written report or written opinion or written communication from Greenwood Cook & Co. with respect to the completion, or otherwise, of the responsibilities of Greenwood Cook & Co. on the audit; (WITHDRAWN BY THE PCC BWS)~~
 - c) after establishing the objectives, scope, and reporting requirements for the overall examination of the consolidated financial statements of NBS which he set out in the "International Examination Guide for the year ending September 30, 1987" and in the "Audit Planning Memorandum for the year ending September 30, 1987" and after he identified areas of specific concern and high risk in those documents, respectively, he failed to obtain, from the Price Waterhouse Fort Worth Texas office, a report on the Standard Reporting Form which had been required and set out in the "International Examination Guide" guide, or any sufficient alternative audit evidence in place thereof, with respect to the subsidiary of NBS for which the Price Waterhouse office in Fort Worth Texas had been assigned reporting responsibility; and
 - d) after establishing the objectives, scope and reporting requirements for the overall examination of the consolidated financial statements of NBS which he set out in the "International Examination Guide for the year ending September 30, 1987" and in the "Audit Planning Memorandum for the

year ending September 30, 1987" and after he identified areas of specific concern and high risk in those documents, respectively, he failed to obtain, from the Price Waterhouse Southbend Indiana office, a report on the Standard Reporting Form which had been required and set out in the "International Examination Guide" guide, or any sufficient alternative audit evidence in place thereof, with respect to the subsidiaries of NBS for which the Price Waterhouse office in Southbend Indiana had been assigned reporting responsibility.

2. THAT, the said Owen F.H. Smith, CA, on or about the 28th day of December 1987, expressed an opinion on the consolidated financial statements of National Business Systems Inc. (NBS) for the year ended September 30, 1987, and did not comply in all material respects with the generally accepted auditing standards of the profession, contrary to Rule 206.2 of the rules of professional conduct, in that; after his firm, Price Waterhouse, had been appointed by the shareholders of NBS as the auditor for the year ended September 30, 1987, and knowing that the audit of NBS involved substantial audit risk:
 - a) he failed, after having entered into an arrangement with Greenwood Cook & Co. and the management of NBS for Greenwood Cook & Co. to assume certain audit responsibilities, to adequately review work performed by Greenwood Cook & Co. with respect to certain areas of the audit;
 - b) he failed to obtain sufficient appropriate audit evidence to support the unqualified opinion expressed in the audit report, in that; he failed to properly consider the unadjusted errors that were brought to his attention;
 - c) he failed to obtain sufficient appropriate audit evidence to establish that the work carried out by the Price Waterhouse Fort Worth Texas office, with respect to material areas of the NBS audit, was complete;
 - d) he failed to obtain sufficient appropriate audit evidence to establish that the work carried out by the Price Waterhouse Southbend Indiana office, with respect to material areas of the NBS audit, was complete;
 - e) ~~he failed to obtain sufficient appropriate audit evidence to establish that the work carried out by Greenwood Cook & Co., with respect to material areas of the NBS audit, was complete;~~ **(WITHDRAWN BY THE PCC BWS)**
 - f) ~~he failed to obtain adequate evidence that Greenwood Cook & Co. had completed their examination in a manner that would reasonably permit reliance on Greenwood Cook & Co.'s work or any report that Greenwood Cook & Co. may have provided;~~ **(WITHDRAWN BY THE PCC BWS)**
 - g) ~~he failed to document matters important in providing evidence to support the content of the audit report;~~ **(WITHDRAWN BY THE PCC BWS)**
 - h) ~~he failed to obtain sufficient audit evidence to support the inclusion in income of approximately 3.9 million dollars on account of the sale of distribution rights from N.B.S. to P.T. Unitwin Indonesia;~~ **(WITHDRAWN BY THE PCC BWS)**

- i) having compiled information that additional provisions for inventory obsolescence and doubtful receivables were required of \$2.9 million and \$0.9 million respectively, he reduced these amounts to \$1.0 million in total in his overall determination of unadjusted errors in the financial statements, without having obtained sufficient appropriate audit evidence to support the reduction; and
 - j) he removed from his listing of unrecorded adjustments approximately 1.2 million dollars for which management had promised to provide support without ensuring that the supporting evidence was available prior to the release of his audit report.
- 3. ~~THAT, the said Owen F.H. Smith, CA, on or about the 28th day of December 1987, expressed an opinion without reservation that the consolidated financial statements of National Business Systems Inc. (NBS) as at September 30, 1987 were prepared in accordance with generally accepted accounting principles when such statements departed in a material respect or respects from the recommendations of the Canadian Institute of Chartered Accountants, as set out in the CICA Handbook at the material time, contrary to Rule 206.4 of the rules of professional conduct, in that:~~ **(WITHDRAWN BY THE PCC BWS)**
 - a) ~~there was recognized as revenue in the financial statements some 3.9 million dollars with respect to the sale of distribution rights from NBS to P.T. Unitwin Indonesia pursuant to an alleged contract when it had not been established that any sales had been made under the terms of the contract, or that payment had been received prior to the year end or that there was any other sufficient support for the inclusion of the proceeds of the sale of distribution rights in income for the year ended September 30, 1987.~~ **(WITHDRAWN BY THE PCC BWS)**

DATED at St. Catharines this 9th day of November 1990.

H.W. HOBBS, C.A. - DEPUTY CHAIRMAN
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Owen Frederick Hewson Smith

DECISION AND ORDER IN THE MATTER OF: Charges against OWEN FREDERICK HEWSON SMITH, CA, a member of the Institute, under Rules 202, 206.2 and 206.4 of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE NOVEMBER 16, 1990.

DECISION

THAT, having seen, heard and considered the evidence, particulars (a) and (b) of charge No. 1, particulars (e), (f), (g) and (h) of charge No. 2 and charge No. 3 having been withdrawn, THE DISCIPLINE COMMITTEE FINDS Owen Frederick Hewson Smith guilty of charges Nos. 1 & 2.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Smith be reprimanded in writing by the chairman of the hearing.
 2. THAT Mr. Smith be and he is hereby fined the sum of \$20,000, to be remitted to the Institute within sixty (60) days from the date this Decision and order becomes final under the bylaws.
 3. THAT Mr. Smith be and he is hereby charged costs of \$82,000, to be remitted to the Institute within sixty (60) days from the date this Decision and Order becomes final under the bylaws.
 4. THAT Mr. Smith be suspended from the rights and privileges of membership in the Institute for a period of one (1) year from the date this Decision and Order becomes final under the bylaws.
 5. THAT Mr. Smith be and he is hereby required to complete, by attending in their entirety, within one (1) year from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute:
 1. Practical Skills for the Review of a File; and
 2. Resolving Judgmental Issues on Audit and Review Engagements,
- or, in the event a course listed above becomes unavailable, the successor course which takes its place.
6. THAT notice of this Decision and order, disclosing Mr. Smith's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants.

7. THAT in the event Mr. Smith fails to comply with any of the requirements of this Order within the time periods specified, he shall thereupon be expelled from the rights and privileges of membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified in paragraph 6 hereof.

DATED AT TORONTO, THIS 22ND DAY OF NOVEMBER, 1990
BY ORDER OF THE DISCIPLINE COMMITTEE

B.W. STEPHENSON - SECRETARY
THE DISCIPLINE COMMITTEE

DISCIPLINE COMMITTEE re Owen Frederick Hewson Smith

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against OWEN FREDERICK HEWSON SMITH, CA, a member of the Institute, under Rules 202, 206.2 and 206.4 of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE NOVEMBER 16, 1990

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on November 15 and 16, 1990.

Messrs. Paul Farley and Chris Paliare attended on behalf of the professional conduct committee and the member attended with, and was represented by, his counsel, Messrs. Brian Morgan and David Morritt.

At the commencement of the hearing the professional conduct committee, with the consent of the member, presented amended charges dated November 9, 1990. After these amended charges were accepted by the discipline committee and entered as an exhibit, the professional conduct committee withdrew particulars (a) and (b) of charge No. 1, particulars (e), (f), (g) and (h) of charge No. 2 and charge No. 3. Mr. Smith then pleaded not guilty to charges Nos. 1 and 2.

PROCEDURE FOLLOWED

Counsel for the professional conduct committee then outlined the procedure which counsel for both parties had agreed to and proposed for this hearing. It was proposed that counsel for the professional conduct committee would open his case and file three volumes of exhibits, following which Mr. Fred Mallett, the professional conduct committee investigator, would give evidence, on which there would be no cross-examination. After Mr. Mallett had given evidence, a synopsis of his evidence was to be filed, after which there would be submissions by the professional conduct committee with respect to the question of guilt or innocence, but no submissions would be made on behalf of the member. In the event the committee found Mr. Smith guilty, a statement would be read into the record by his counsel,

Mr. Morgan, and there would be submissions as to sanction, about which there was agreement between the parties.

The committee was of the view that if a synopsis of the investigator's evidence was to be presented as an exhibit it preferred to have it prior to the investigator giving evidence, and both parties agreed.

The committee, through its counsel, expressed some concern with the proposed procedure and, after discussion between counsel, it was made clear on the record that

- while the committee appreciated the fact that both parties were attempting to expedite the hearing, such expedition would not be permitted to take priority over the committee's understanding the evidence or its due deliberation on it;

- both sides understood that, with respect to the evidence called, if there was no cross-examination, such evidence, whether fact or opinion, would be the evidence before the committee and that, while the committee would more readily substitute its opinion for that of the investigator than it would make a finding of fact different from the factual evidence of the investigator, it was unlikely that the committee would make any determination which was materially different from the investigator's evidence; and the committee was at liberty to ask questions.

Counsel for both parties confirmed that they understood these points and did not take issue with them.

DETERMINATION OF GUILT OR INNOCENCE

The committee received the relevant documents, comprising three volumes, which were marked as one exhibit, together with the synopsis of Mr. Mallett's evidence. After Mr. Mallett had given his evidence, making reference to many of the documents, and the committee had heard the submissions of the professional conduct committee, it deliberated and found Mr. Smith guilty of the two charges.

DETERMINATION OF SANCTION

Mr. Morgan read a statement into the record, following which Mr. Farley made submissions on behalf of the professional conduct committee and outlined the sanctions sought, which were

- the imposition of costs in the amount of \$82,000;
- the suspension of the member for one year; and
- notification of the decision and order, disclosing the member's name, to the Public Accountants Council, to the *Canadian* Institute of Chartered Accountants and by publication in *CheckMark*.

When the parties retired after presenting the joint submission as to sanction, the committee had an opportunity to consider whether or not the sanctions suggested seemed at first instance to be appropriate, or whether the parties should be asked to address other issues. The chair adjourned the hearing for the day so that the committee could consider this matter, discuss any questions that panel members might have and further review the exhibits. Upon resumption of the hearing the following morning, the committee advised the parties that it had a number of concerns and some specific questions.

The committee's concerns related to the appropriateness of the sanction suggested and in particular

- why no reprimand or fine had been proposed;
- what effect a suspension would have on the partner of a national firm; and
- how the suspension would be policed.

The committee made known to both parties that it did not regard itself bound by the submissions which had been made and asked them to address the committee's concerns.

The committee also raised a number of specific factual questions, which were answered.

The parties then made lengthy and comprehensive submissions with respect to sanction, following which the committee considered itself in a position to exercise the onerous duty of sentencing described by Mr. Justice Cory in Re: Stevens and Law Society of Upper Canada 55 O.R. (2d) 405 at p. 411, which was referred to by the member's counsel in his submissions.

After considering all the evidence and the submissions made in respect of sanction, the committee ordered as follows: ORDER IT IS ORDERED in respect of the charges:

1. THAT Mr. Smith be reprimanded in writing by the chairman of the hearing.
2. THAT Mr. Smith be and he is hereby fined the sum of \$20,000, to be remitted to the Institute within sixty (60) days from the date this Decision and order becomes final under the bylaws.
3. THAT Mr. Smith be and he is hereby charged costs of \$82,000, to be remitted to the Institute within sixty (60) days from the date this Decision and order becomes final under the bylaws.
4. THAT Mr. Smith be suspended from the rights and privileges of membership in the Institute for a period of one (1) year from the date this Decision and Order becomes final under the bylaws.
5. THAT Mr. Smith be and he is hereby required to complete, by attending in their entirety, within one (1) year from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute:
 1. Practical Skills for the Review of a File; and
 2. Resolving Judgmental Issues on Audit and Review Engagements,or, in the event a course listed above becomes unavailable, the successor course which takes its place.
6. THAT notice of this Decision and Order, disclosing Mr. Smith's name, be given after this Decision and order becomes final under the bylaws:
 - (a) by publication in *Checkmark*;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants.
7. THAT in the event Mr. Smith fails to comply with any of the requirements of this Order within the time periods specified, he shall thereupon be expelled from the rights and privileges of membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified in paragraph 6 hereof.

The committee is of the view that a reprimand is appropriate in situations where there has been a finding of guilt, as a specific deterrent to the member charged and as a reminder to the member that he has failed to comply with the standards of the profession.

The imposition of costs is appropriate in this case, as was acknowledged by both counsel. The committee was persuaded by the submissions of counsel that the full costs incurred since the laying of charges, being \$82,000, was the appropriate sum to order.

Initially, the committee had concerns about the effect and length of the suspension. After the parties addressed these issues, the committee was satisfied that the suspension would not be a mere inconvenience to a senior member of a national firm but would have a significant impact on the member.

As to whether the suspension was long enough, the committee considered that the Ontario Securities Commission had ordered that Mr. Smith not audit public clients from April 1990 to April 1991. In view of the fact that a suspension of this committee does not take effect until after the decision and order becomes final, a process which can take some time, considering the written reasons must be circulated to and approved by all panel members, and the thirty-day appeal period provided in the bylaws must elapse, a one year suspension was thought appropriate.

This suspension was thought to be necessary as both a specific deterrent to the member charged and a general deterrent to the membership and the profession as a whole. The charges on which this committee made findings of guilty were serious in nature and go to the very heart of the credibility of the profession, in terms of its skill and standards in the audit area. It is the committee's feeling that the maximum term for a suspension should be one year, otherwise an expulsion would be the proper course of action.

The degree of credibility of financial statements to which audit reports are attached, and the level of confidence in the soundness of the audit work, distinguish the members of this Institute and differentiate chartered accountants from other accountants. Failure to maintain the profession's audit standards is a very serious failing and requires this committee to send a strong message to this and all members of the Institute that it will not be tolerated.

IMPOSITION OF SANCTION BEYOND THAT RECOMMENDED BY THE JOINT SUBMISSION

The committee felt that a fine was appropriate in this matter. Although there was no question of moral turpitude or of a lack of integrity or honesty in this matter, the public was affected by the lack of judgment and due care of the member and the losses were significant. A fine is being imposed as both a specific and general deterrent. It is hoped that all members will be made aware of the seriousness with which the committee views the conduct giving rise to the charges upon which this member was found guilty. As to the quantum of the fine, the committee took into consideration fines that had been levied in previous cases and, after much deliberation, determined that \$20,000 was the appropriate amount.

In addition to specific and general deterrent aspects, sanctions should also address the principle of rehabilitation, when appropriate. It is with the latter objective in mind that the committee ordered that the member attend the professional development courses noted. It was the committee's opinion, after a review of the syllabus of the professional development courses offered through the Institute, that those courses ordered most directly address the issues raised in this case and, in particular, those issues in respect of which the member was found to be deficient. The committee's selection of courses is for the educational benefit of the member, to enable him to upgrade his standards. This, in turn, will serve to better protect the public interest.

The appeal committee of this Institute, in its decision of February 12, 1990 concerning Mr. M.A. Finkelman, dealt explicitly and at some length with the issue of disclosure of the member's name in the publication of the disciplinary order. The appeal committee held that disclosure of a member's name in a notice of discipline proceedings was an effective general deterrent to all other members, and would engender confidence in the self-governing process of the Institute. This panel of the discipline committee agrees with that reasoning and would only add that in this

particular case it believes that publication disclosing the member's name will also act as a specific deterrent to this member.

The contingency of expulsion in the event of non-compliance with the terms of the Order, as a last resort, is a sanction which is necessary to the preservation of the profession's good reputation and its ability to effectively serve the public interest, as a method of enabling the profession to ultimately deal with those members who refuse to be bound by the self-regulating aspects of the profession.

In these reasons the committee has described the procedure which was proposed by counsel and adopted for the hearing, the committee's concerns respecting the procedure and its subsequent concerns with respect to sanction, not because the committee disapproved of the procedure adopted but, rather, in the hope that, if a similar procedure is proposed in the future, the parties and the discipline committee panel hearing the case may benefit from this panel's experience. The exhibit books of documents filed by the professional conduct committee at the commencement of the hearing exceeded 500 pages. The book of documents filed on the member's behalf exceeded 100 pages. It was essential for the committee to have an opportunity to review these exhibits, which it did on the evening of November 15th, in order to fully and properly determine the appropriate sanction. The committee is indebted to counsel for both parties for their efforts to expedite the hearing, and for the clarity and comprehension with which they addressed the issues, including and in particular the issues raised by the committee on the second day of the hearing.

DATED AT TORONTO, THIS 17th DAY OF JANUARY, 1991.
BY ORDER OF THE DISCIPLINE COMMITTEE

D.J. HERLICK, CA - DEPUTY CHAIRMAN
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.G. HARRISON, CA
P. RAYSON, CA
L.W. RICH, CA
D.P. SETTERINGTON, CA
V.G. STAFL (Public representative)