

Paul Francis Kwiatkoski: Summary, as Published in *CheckMark*

Paul Francis Kwiatkoski, of Hamilton, 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. The charge arose from his conviction under the Criminal Code for theft. Mr. Kwiatkoski was the owner of a small company, and the volunteer manager of a local parish credit union. He developed and carried out a scheme to keep his company afloat through the use of credit union funds obtained by ostensibly making loans to fictitious borrowers. Ultimately he fully repaid the loans, and reported himself to the police. Mr. Kwiatkoski was fined \$3,000 and expelled from the Institute.

CHARGE(S) LAID re Paul Francis Kwiatkoski

The Professional Conduct Committee hereby makes the following charges against Paul Francis Kwiatkoski, CA, a member of the Institute:

1. THAT, the said Paul Francis Kwiatkoski, on or about the 28th day of June, 1996, 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 he was convicted of a charge that he, within three years prior to the 8th day of September, 1994, at the City of Hamilton in the Regional Municipality of Hamilton-Wentworth, did steal monies, the property of the St. John the Baptist (Hamilton) Credit Union, of a value exceeding \$1,000, contrary to Section 334(a) of the *Criminal Code of Canada*, all of which is contrary to Rule 201.1 of the rules of professional conduct.

Dated at Bellville this 3rd day of August 1995

JENNIFER FISHER, CA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Paul Francis Kwiatkoski

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

DECISION AND ORDER MADE NOVEMBER 18, 1996

DECISION

THAT, having seen and considered the evidence, and having heard the plea of guilty to the charge, the Discipline Committee finds Paul Francis Kwiatkoski guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Kwiatkoski be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Kwiatkoski be and he is hereby fined the sum of \$3,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Kwiatkoski be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Kwiatkoski's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
5. THAT Mr. Kwiatkoski 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 22ND DAY OF NOVEMBER, 1996
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Paul Francis Kwiatkoski

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

WRITTEN REASONS FOR THE DECISION AND ORDER MADE NOVEMBER 18, 1996

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on November 18, 1996.

Mr. P.F. Farley attended on behalf of the professional conduct committee. Mr. Kwiatkoski represented himself and confirmed for the record that he understood he had the right to be represented by legal counsel.

A charge had been laid against Mr. Kwiatkoski by the professional conduct committee pursuant to Rule 201.1 of the Rules of Professional Conduct. Mr. Kwiatkoski 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. The charge read as follows:

THAT, the said Paul Francis Kwiatkoski, on or about the 28th day of June, 1996, 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 he was convicted of a charge that he, within three years prior to the 8th day of September, 1994, at the City of Hamilton in the Regional Municipality of Hamilton-Wentworth, did steal monies, the property of the St. John the Baptist (Hamilton) Credit Union, of a value exceeding \$1,000, contrary to Section 334(a) of the *Criminal Code of Canada*, all of which is contrary to Rule 201.1 of the rules of professional conduct.

Mr. Farley entered as evidence a document brief that contained a copy of the criminal court indictment against Mr. Kwiatkoski, the transcript of the proceedings on the guilty plea, and the transcript of the proceedings on the reasons for sentence.

Mr. Kwiatkoski was the volunteer manager of a small parish credit union. He was also the owner of a small meat company that was experiencing financial difficulties. Mr. Kwiatkoski developed and carried out a scheme to keep this company afloat through the use of credit union funds obtained by ostensibly making loans to fictitious borrowers. Mr. Kwiatkoski kept records of the fictitious transactions, and made loan interest repayments on the misappropriated funds to the credit union. Ultimately he fully repaid the loans, and reported himself to the police and to the Institute.

Based on the evidence filed, and the plea of guilty, the discipline committee found Mr. Kwiatkoski guilty of the charge laid against him by the professional conduct committee.

After making its finding of guilt on the charge, the discipline committee heard the submissions of the professional conduct committee with regard to sanctions. Mr. Kwiatkoski also made submissions with respect to sanctions and filed a document brief containing letters of reference

from family, friends and business associates. Upon deliberation, the committee made the following order:

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Kwiatkoski be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Kwiatkoski be and he is hereby fined the sum of \$3,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Kwiatkoski be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Kwiatkoski's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
5. THAT Mr. Kwiatkoski 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.

In determining the appropriate sanction, the committee considered the three general principles of sentencing, namely rehabilitation, general deterrence and specific deterrence.

Reprimand

The discipline committee believes that a reprimand in writing from the chair of the hearing stresses to Mr. Kwiatkoski the unacceptability of his conduct as a chartered accountant.

Fine

The professional conduct committee submitted that a fine in the range of \$3,000 to \$5,000 should be levied against Mr. Kwiatkoski. The discipline committee decided that a fine of \$3,000 was appropriate in this case, both as a general deterrent to like-minded members, and as a demonstration to the public of the profession's intolerance of the type of behaviour demonstrated by Mr. Kwiatkoski.

Expulsion

The committee felt compelled to order expulsion in this case, as a general deterrent. The member was guilty of theft. The chartered accountancy profession cannot tolerate members who gain a position of trust as a result of their qualifications and designation, and then steal while enjoying that trust.

Notice

Publication of the decision and order, including Mr. Kwiatkoski's name, is, in the opinion of the committee, a general deterrent. Communication of the fact that the profession views breaches

of its bylaws and rules of professional conduct seriously is an important factor in the governance of the profession. The committee felt that publication of the proceedings should be made in *CheckMark*. It did not, however, believe that newspaper publication should be ordered.

Institute Bylaw 575(3) provides as follows:

Notice of expulsion of a member shall be given to the public by publication in a newspaper distributed in the geographic area of the member's current or former practice, employment and/or residence, or in such other manner as the discipline committee may determine to be appropriate, 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, in which case the committee shall provide written reasons for not ordering publication of the notice.

The committee felt that publication in local newspapers was not warranted in this case due to the various mitigating factors described below.

Mr. Kwiatkoski revealed his misconduct to the police and to the Institute. In light of the fact that he paid interest on the loans and ultimately repaid all of the money, Mr. Kwiatkoski's misconduct would not likely have been discovered had he attempted to keep it concealed. He assisted the police and the forensic accountants with their investigation of the matter and pointed out that the forensic accountants had incorrectly credited him with \$36,241.

In the criminal process Mr. Kwiatkoski pleaded guilty. With respect to the charge of professional misconduct, Mr. Kwiatkoski cooperated throughout, also entering a plea of guilty, and generally facilitated the professional conduct committee in dealing with this matter.

In the criminal proceedings, the trial judge, paraphrasing from the judgment in the Quebec Court of Appeal case of R. v. Legare, stated:

Were it not for the fact that the sentence in a case such as this should have some exemplary value and operate as a deterrent to others, I would question whether it would serve the public interest to send a man such as yourself to prison, thereby causing further suffering to you and your family.

The discipline committee was of the view that Mr. Kwiatkoski was not in need of further rehabilitation, nor that he needed to be specifically deterred from similar conduct occurring again in the future. The committee also felt that the general community where Mr. Kwiatkoski resides and works has had sufficient publication of this matter, and that further publication of these proceedings would simply add to the hardship the Kwiatkoski family has already suffered without benefitting the public interest. In these unusual circumstances, the committee concluded that the public did not need further protection.

Certificate of membership

As the protection of the public interest is one of the basic pillars of the profession, the panel concluded that it is of utmost importance that Mr. Kwiatkoski no longer appear to be a member of the chartered accountancy profession after his expulsion. Accordingly, he was ordered to surrender his certificate of membership in the Institute to the discipline committee secretary.

DATED AT TORONTO, THIS DAY OF JUNE, 1997
BY ORDER OF THE DISCIPLINE COMMITTEE

L.P. BOOKMAN, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL

P.B.A. CLARKSON, CA
S.A. GOODMAN, CA
J.J. LONG, CA
S.W. SALTER, CA
B.A. YOUNG (Public Representative)