Paul William Stinchcombe: Summary, as Published in *CheckMark*

Paul William Stinchcombe, of Mississauga, was found guilty of a charge of professional misconduct, under Rules 201. He stole money belonging to a company related to his employer, and converted other funds of his employer to improperly obtain two personal computers for his home use. He was suspended from membership for one year.

In deciding not to expel him, the discipline committee felt that the member was deserving of a chance for rehabilitation. Mr. Stinchcombe had returned the funds to his employer and confessed his misconduct voluntarily before his employer was aware of its loss. After confessing Mr. Stinchcombe resigned his employment.

Mr. Stinchcombe returned to MEMBERSHIP IN GOOD STANDING on April 16th, 1994.

CHARGE(S) LAID re Paul William Stinchcombe

The Professional Conduct Committee hereby makes the following charges against Paul W. Stinchcombe, CA, a member of the Institute:

1. THAT, the said Paul W. Stinchcombe, in or about the period March 1, 1991 through to June 11, 1991, while the Vice-President Finance and Administration of Glen-Warren Productions Limited, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201 of the Rules of Professional Conduct, in that:

    (a) he embarked upon an illegal scheme to improperly transfer to his own benefit, money, in the amount of $3,229.80, belonging to Agincourt Productions Limited and Film Associates, a company related to Glen -Warren Productions Limited, without the company's knowledge or consent, and he did transfer this money to an account set up by him for his own use; and

    (b) he embarked upon a scheme to use funds, and did use funds, in the amount of $7,064.28, belonging to Glen-Warren Productions Limited, to improperly obtain two personal computers for his own use at home without first securing the required company approvals for the purchase of these computers and without advising the company, Glen-Warren Productions Limited, that he had spent the funds and obtained the computers for home use.

DATED at Toronto this 23rd DAY OF JUNE, 1992.

J.L.M. BADALI, FCA – CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Paul William Stinchcombe

DECISION AND ORDER IN THE MATTER OF: A charge against PAUL WILLIAM STINCHCOMBE, CA, a member of the Institute, under Rule 201 of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE OCTOBER 1, 1992

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to the charge, THE DISCIPLINE COMMITTEE FINDS Paul William Stinchcombe guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

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

2. THAT Mr. Stinchcombe 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.

3. THAT notice of this Decision and Order, disclosing Mr. Stinchcombe'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.

4. THAT Mr. Stinchcombe surrender his certificate of membership in the Institute to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held by the registrar during the period of suspension and thereafter returned to Mr. Stinchcombe.

DATED AT TORONTO, THIS 5TH DAY OF OCTOBER, 1992
BY ORDE ;OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Paul William Stinchcombe

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: A charge against PAUL WILLIAM STINCHCOMBE, CA, a member of the Institute, under Rule 201 of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE OCTOBER 1. 1992

These proceedings before a panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on October 1, 1992.

Mr. Paul Farley attended on behalf of the professional conduct committee, and Mr. Stinchcombe appeared with his counsel, Mr. Douglas McTavish.

The professional conduct committee had laid one charge under Rule of Professional Conduct 201, and Mr. Stinchcombe pleaded guilty to the charge. The member and his counsel confirmed that they understood that upon the plea of guilty, and upon that basis alone, the member could be found guilty of the charge.

An agreed statement of facts and other documents were filed by the parties. After receiving the documentation and hearing counsels' submissions upon the charge, the discipline committee found Mr. Stinchcombe guilty of the charge.

The reasons for the committee's finding of guilty are set out below.

The finding of guilty

The charge laid by the professional conduct committee against Mr. Stinchcombe reads as follows:

THAT, the said Paul W. Stinchcombe, in or about the period March 1, 1991 through to June 11, 1991, while the Vice-President Finance and Administration of Glen-Warren Productions Limited, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201 of the Rules of Professional Conduct, in that

(a) he embarked upon an illegal scheme to improperly transfer to his own benefit, money, in the amount of $3,229.80, belonging to Agincourt Productions Limited and Film Associates, a company related to Glen-Warren Productions Limited, without the company's knowledge or consent, and he did transfer this money to an account set up by him for his own use; and

(b) he embarked upon a scheme to use funds, and did use funds, in the amount of $7, 064.28, belonging to Glen-Warren Productions Limited, to improperly obtain two personal computers for his own use at home without first securing the required company approvals for the purchase of

these computers and without advising the company, Glen-Warren Productions Limited, that he had spent the funds and obtained the computers for home use.

The agreed statement of facts, signed by Mr. Stinchcombe, outlined the history of events that led to the charge.

Mr. Stinchcombe was employed as Vice-President, Finance and Adminstration, by Glen-Warren Productions Limited, a wholly-owned subsidiary of Baton Broadcasting Incorporated. Glen-Warren is a general partner in a limited partnership called Agincourt Productions and Film Associates ("Agincourt").

On April 19, 1991, Mr. Stinchcombe caused Agincourt to issue a cheque in the amount of $3,229.80. Mr. Stinchcombe signed the cheque himself and photocopied the signature of his superior onto the cheque. Mr. Stinchcombe deposited the cheque into a bank account he controlled. His intention at the time was to use the funds for his own personal benefit. Mr. Stinchcombe had second thoughts and reversed the transaction on June 11, 1991, without any external reason or pressure causing or forcing him to do so.

On or about March *8* and April 15, 1991, Mr. Stinchcombe purchased, with company funds, but without company authorization, various pieces of computer equipment, at a total cost of *$7,064.28,* for his home use. He then directed a company who owed his employer money to pay the funds directly to the suppliers of this computer equipment.

On June 11, 1991, Mr. Stinchcombe advised his employer that he had been "borrowing from the company" and that he had improperly obtained two computers. Glen-Warren accepted Mr. Stinchcombe's immediate resignation. Mr. Stinchcombe returned the computer equipment on June 14, 1991. An audit conducted by Glen-Warren confirmed that there were no other problems or irregularities, aside from the acts to which Mr. Stinchcombe had confessed.

Based on the evidence outlined above, the discipline committee found Mr. Stinchcombe guilty of the charge. It then heard counsels' submissions as to sanction, and, after deliberation, made the following order:

ORDER

IT IS ORDERED in respect of the charge:

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

2. THAT Mr. Stinchcombe 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.

3. THAT notice of this Decision and Order, disclosing Mr. Stinchcombe'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.

4. THAT Mr. Stinchcombe surrender his certificate of membership in the Institute to the registrar of the Institute within ten (10) days from the date this Decision and Order

becomes final under the bylaws, to be held by the registrar during the period of suspension and thereafter returned to Mr. Stinchcombe.

The reasoning behind the committee's order as to sanction is set out below.

Suspension

In determining sanctions, the committee gave consideration to the principles of general deterrence, specific deterrence and rehabilitation. In almost all cases in which this committee finds members guilty of charges involving moral turpitude and fraud, it expels the member from the Institute. The evidence in this case, however, suggests that Mr. Stinchcombe is unlikely to ever become involved in this kind of activity again, and is deserving of a chance for rehabilitation. His actions following his transgressions indicate how troubled he was over the events. This case is truly unique, in that

- Mr. Stinchcombe never used the money which he had diverted to himself, although he clearly needed it, but instead, after reflection, transferred the funds back;
- he confessed his actions to his employer prior to being caught. Had he not done so, the evidence indicates that his actions would likely never have been detected;
- the time frame between initiating the fraudulent activity and rectifying the situation was brief;
- the member has suffered the loss of employment from a company for which he thoroughly enjoyed working;
- had Mr. Stinchcombe followed proper channels, he would have received authorization for the purchase of the computers for his home use;
- in his testimony he demonstrated great remorse for his actions.

The committee determined that, rather than expelling the member, suspending him from membership for a period of one year was the proper sanction to satisfy the three principles of sentencing in the unique circumstances of this case.

Notice

Counsel for the professional conduct committee requested that notice of this order be given in *CheckMark* without disclosure of the member's name. Defense counsel also requested that Mr. Stinchcombe's name be excluded from the notice.

The provisions dealing with notice are set out in Bylaw 83(2)(3) and (4) as follows:

83 *(2) Notice of any decision or order made by the discipline committee may be given in such form and manner as the discipline committee may from time to time determine.*

(3) Notice of any order of suspension or expulsion of a member shall be given to all members of the Institute after the decision or order becomes final.

(4) Notice given under this bylaw shall disclose the name of the person disciplined unless the discipline committee or the appeal committee, as the case may be, otherwise orders.

While Bylaw 83(3) requires that notice of any order of suspension or expulsion of a member be given to all members of the Institute, Bylaw 83(4) gives this committee discretionary authority to determine whether or not a member's name should be disclosed in such notice. The Institute's best way of giving notice to all its members is through *CheckMark.*

A body of precedent has built up in respect of the issue of disclosure of members' names in disciplinary notices, which is well set out in the following excerpt from the appeal committee's reasons in the case of Mr. Granatstein:

In the discipline committee's decision regarding Gordon Hardcastle we find the principle of sentencing with respect to publicity is addressed as follows:

> *As to the issue of publicity, the discipline committee embraces the widely-held view that the publishing of the names of members found guilty of professional misconduct is, in the majority of cases, the single most significant penalty that can be administered that addresses both the individual issues of specific deterrence and rehabilitation and the wider needs* of *general deterrence and education* of *the membership at large. Only in the most exceptional* of *circumstances does this committee consider it appropriate that it be asked to dispense with the publishing of the name of a guilty member.*

The principle of sentencing with respect to publicity enunciated in the Hardcastle decision is repeated in the appeal committee's decision in the Finkelman and Solmon case, as follows:

> *The appeal committee wishes to make a general comment about Bylaw 83(4). We recognize that as long as the bylaw provides that the discipline committee or the appeal committee may "otherwise order" some members being disciplined will argue that in the particular circumstances of their case such an order should be made and publication of their name withheld. In light of the principle of general deterrence and the importance of confidence in the openness of the Institute's disciplinary process, this committee is of the view that circumstances which could persuade an appeal committee or the discipline committee not to publish a disciplined member's name will be rare and unusual.*

In both the Hardcastle and Finkelman and Solmon cases we are guided by the principle that, in sentencing, only in rare and unusual circumstances will the name of a member found guilty of professional misconduct be withheld from publication.

The circumstances in this case involve a member who has been found guilty under Rule of Professional Conduct 201 of misconduct involving moral turpitude and fraud, and who is being given a lengthy suspension as a result of that misconduct. Neither counsel could cite a previous case involving charges of moral turpitude, in which the member was either suspended or expelled, where the name of the member was ordered to be withheld. The discipline committee does not feel that the mitigating factors set out above, in respect of the reasoning as to why the sanction of suspension is more appropriate in this case than that of expulsion, is sufficient to persuade it to dispense with disclosure of the member's name in the notice. The disciplinary process must be open and must be seen to be open. Except in rare and unusual circumstances, the non-disclosure of a guilty member's name may result in an order that undermines the confidence of the profession and the public in the openness of the disciplinary process, and may not adequately address the need for general deterrence. For these reasons the committee ordered that the notice to be given of this matter, including the publication in *CheckMark,* include the member's name.

DATED AT TORONTO, THIS 25TH DAY OF NOVEMBER, 1992
BY ORDER OF THE DISCIPLINE COMMITTEE

R.C.H. ANDREWS, CA - CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

C.J. BURKE, FCA
F.J. DUNN, CA ,
T.J.T. MARK, FCA
L.L. WORTHINGTON, FCA
A. CRANSTON (Public representative)