Peter T. Bogart: Summary, as Published in *CheckMark*

Peter T. Bogart, of Toronto, was found guilty of four charges 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 misappropriation from clients of more than $1 million in 40 separate transactions over five years. Mr. Bogart was fined $20,000 and expelled from the Institute.

CHARGE(S) LAID re Peter T. Bogart

The Professional Conduct Committee hereby makes the following charges against Peter Bogart, FCA, a member of the Institute:

1. THAT the said Peter Bogart, in or about the period January 1, 1996 to August 31, 2001, 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 misappropriated approximately $728,000.00 from the bank account, 'A' of his client, L.L.O., contrary to Rule 201.1 of the rules of professional conduct.

2. THAT the said Peter Bogart, on or about May 31, 2000, 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 misappropriated approximately $9,000.00 (U.S.) from the bank account, 'B', of his client, L.L.O., contrary to Rule 201.1 of the rules of professional conduct.

3. THAT the said Peter Bogart, in or about the period September 1, 1999 to August 31, 2001, 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 misappropriated approximately $108,775.00 from the bank account, 'C', of his client, E.G.O., contrary to Rule 201.1 of the rules of professional conduct.

4. THAT the said Peter Bogart, in or about the period from March 1, 1996 to June 30, 2001, 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 directed a total of approximately $211,320.00 be paid to his personal tax account at Canada Customs and Revenue Agency from the bank account, 'A', of his client, L.L.O., without the authorization, knowledge or consent of L.L.O., contrary to Rule 201.1 of the rules of professional conduct.

Dated at Toronto, Ontario this 14th day of May 2002.

R.A. JOHNSTON, FCA - DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Peter T. Bogart

DECISION AND ORDER IN THE MATTER OF: Charges against **PETER TEIGNMOUTH BOGART, FCA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE SEPTEMBER 9, 2002

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1, 2, 3 and 4, the Discipline Committee finds Peter Teignmouth Bogart guilty of charges Nos. 1, 2, 3 and 4.

ORDER

IT IS ORDERED in respect of the charges:

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

2. THAT Mr. Bogart be and he is hereby fined the sum of $20,000, 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. Bogart be and he is hereby expelled from membership in the Institute.

4. THAT notice of this Decision and Order, disclosing Mr. Bogart'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. Bogart surrender his certificate of membership in the Institute and his certificate of Fellowship 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 10TH DAY OF SEPTEMBER, 2002
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Peter T. Bogart

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **PETER TEIGNMOUTH BOGART, FCA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE SEPTEMBER 9, 2002

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on September 9, 2002 to hear charges brought by the professional conduct committee against Peter Bogart, a member of the Institute.

2. Mr. Paul Farley represented the professional conduct committee. He was accompanied by Mr. Bruce Armstrong, the investigator appointed by the professional conduct committee. Mr. Bogart was present and was represented by his counsel, Mr. Peter Lindsay.

3. The decision of the discipline committee was made known at the hearing on September 9, 2002. The order with respect to sanction was made after the parties had been excused and upon the further deliberation of the panel. The terms of the order were made known on September 10, 2002, when the formal decision and order was issued.

4. These reasons, given in writing pursuant to Bylaw 574, set out the charges and the decision and order as well as the reasons of the discipline committee.

APPLICATION FOR THE HEARING TO BE HELD *IN CAMERA*

5. The notice of assignment hearing and related documents, the notice of hearing, and the charges were marked as Exhibits 1, 2 and 3, respectively. Before taking the plea, the chair asked if there were any preliminary matters to be dealt with. Mr. Lindsay advised that there was, namely an application for the hearing to be held *in camera*. In support of the application, Mr. Lindsay filed a letter of September 5, 2002 to the discipline committee, a document brief and a brief of authorities, which were marked as Exhibits 4, 5 and 6, respectively.

6. Mr. Lindsay asked that the hearing be held *in camera* pursuant to Bylaw 554 because of intimate financial and personal matters that would be disclosed if the hearing were held in public.

7. Mr. Farley submitted that the principle that hearings should be public should prevail except in two respects. First, he conceded that the evidence of Mr. Bogart's psychiatrist should be heard *in camera*, and his psychiatric report letters sealed to protect the sensitive personal information set out therein. Secondly, in the interest of protecting the victims of the misconduct, he conceded that the agreed statement of facts should be sealed.

8. After hearing the submissions of both counsel, the panel deliberated, and when the hearing resumed the chair made the panel’s decision known by directing that the agreed statement of facts and the letters of the psychiatrist be sealed, and that the psychiatrist's

testimony be held *in camera*. The chair also indicated that the panel would be open to reconsidering its ruling at the conclusion of the hearing upon the request of either party.

DECISION ON THE CHARGES

9. The charges laid by the professional conduct committee dated May 14, 2002 read as follows:

1. THAT the said Peter Bogart, in or about the period January 1, 1996 to August 31, 2001, 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 misappropriated approximately $728,000.00 from the bank account, 'A' of his client, L.L.O., contrary to Rule 201.1 of the rules of professional conduct.

2. THAT the said Peter Bogart, on or about May 31, 2000, 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 misappropriated approximately $9,000.00 (U.S.) from the bank account, 'B', of his client, L.L.O., contrary to Rule 201.1 of the rules of professional conduct.

3. THAT the said Peter Bogart, in or about the period September 1, 1999 to August 31, 2001, 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 misappropriated approximately $108,775.00 from the bank account, 'C', of his client, E.G.O., contrary to Rule 201.1 of the rules of professional conduct.

4. THAT the said Peter Bogart, in or about the period from March 1, 1996 to June 30, 2001, 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 directed a total of approximately $211,320.00 be paid to his personal tax account at Canada Customs and Revenue Agency from the bank account, 'A', of his client, L.L.O., without the authorization, knowledge or consent of L.L.O., contrary to Rule 201.1 of the rules of professional conduct.

10. Mr. Bogart entered a plea of guilty to the charges, and confirmed that he understood that on the basis of his plea and on that basis alone he could be found guilty of the charges.

11. Mr. Farley filed an agreed statement of facts and a document brief as Exhibits 8 and 9, respectively. As some of the documents revealed who the victims of the misconduct were, it was ordered that the document brief also be sealed. The agreed statement of facts was signed by Mr. Bogart on his own behalf and by Mr. Farley on behalf of the professional conduct committee.

12. The misconduct can be succinctly summarized. Mr. Bogart was engaged in the practice of public accounting. He had a good reputation. He had been made a Fellow of the Institute. A majority of his time was devoted to work for a related group of clients. He came to enjoy the complete trust and confidence of these clients, and had a great deal of control over their financial affairs.

13. Over a period of approximately five years, ending in August 2001, Mr. Bogart used his position of trust to misappropriate over $1,000,000 of his clients' money.

14. The misappropriations were discovered in August 2001after the account monitoring group of the bank at which Mr. Bogart's clients did most of their banking came across a cheque payable to Mr. Bogart out of the personal account of one of his clients which was numerically out of sequence with other cheques going through that account at the same time. The ensuing investigation revealed the misappropriations, and Mr. Bogart's services were terminated in September 2001.

15. Upon deliberation, the panel concluded that there was no doubt that the charges of misappropriating a substantial amount of money had been proven, and that Mr. Bogart was guilty of professional misconduct.

16. When the hearing resumed, the chair read the following decision into the record:

> DECISION
>
> THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1, 2, 3 and 4, the Discipline Committee finds Peter Teignmouth Bogart guilty of charges Nos. 1, 2, 3 and 4.

ORDER AS TO SANCTION

17. There was really only one contentious issue with respect to sanction, namely whether or not Mr. Bogart's name should be disclosed in the notice of the decision and order.

18. The professional conduct committee did not call evidence with respect to sanction. Mr. Lindsay called Mr. Bogart's psychiatrist, Dr. Robin William Brooks-Hill, whom Mr. Farley then cross-examined.

19. Dr. Brooks-Hill's psychiatric report letters to Mr. Lindsay were part of the document brief filed as Exhibit 5 upon the application for an *in camera* hearing. It was Dr. Brooks-Hill's opinion that there was a grave risk that Mr. Bogart would commit a destructive act to himself if his name were disclosed in a *CheckMark* notice of this proceeding.

20. The request of the professional conduct committee was for an order which included a reprimand from the chair, a fine of $20,000, expulsion from the Institute, and notices in *CheckMark* and *The Globe and Mail* disclosing of Mr. Bogart's name, as well as notice to the CICA and to the Public Accountant's Council.

21. Mr. Lindsay did not take issue with the requested reprimand, fine or expulsion, but submitted that Mr. Bogart's name should be withheld from any notice of the decision and order.

22. After hearing the submissions of both parties, relating mostly to the issue of disclosure of Mr. Bogart's name, the panel began its deliberations. After awhile we advised the parties, who were awaiting our decision outside the Council Chamber, that they were excused as we needed more time for deliberations and this was an appropriate case for our order to be given in writing.

23. The panel concluded its deliberations late on September 9, and the terms of the order were sent to both counsel on September 10. The formal order reads as follows:

ORDER

IT IS ORDERED in respect of the charges:

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

2. THAT Mr. Bogart be and he is hereby fined the sum of $20,000, 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. Bogart be and he is hereby expelled from membership in the Institute.

4. THAT notice of this Decision and Order, disclosing Mr. Bogart'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. Bogart surrender his certificate of membership in the Institute and his certificate of Fellowship 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

24. The panel concluded that a reprimand was appropriate to stress to Mr. Bogart the serious nature of his offence and the unacceptability of his conduct as a chartered accountant.

Fine and Expulsion

25. The panel concluded that as a matter of general deterrence Mr. Bogart should be fined the amount of $20,000, and expelled from membership in the Institute. Essentially, the only mitigating factor in this case was that Mr. Bogart was able to repay his clients the money he stole, which he did only after he was caught. There is no question that this kind of conduct warrants expulsion and a substantial fine.

Notice

26. The submission made on behalf of Mr. Bogart on the issue of publication of his name was that the discipline committee, in effect, had Mr. Bogart's life in its hands. In essence, the submission was that publishing notice of the decision and order disclosing Mr. Bogart's name would put his life at risk, whereas withholding his name from the notice would or might preserve it.

27. Dr. Brooks-Hill testified that he could not be certain as to what Mr. Bogart would do in the event notice of his misconduct and expulsion were disclosed, but he did testify that there was a very grave risk that Mr. Bogart would take his own life.

28. With respect to the misconduct itself, Dr. Books-Hill said that it was not easy to understand the theft of the money, which Mr. Bogart did not need, did not use, and did not receive any apparent enjoyment or benefit from. The doctor testified that the actions could be explained, in part, by the fact that underneath the image of a jovial persona held in high esteem by his profession, Mr. Bogart had a serious problem with self-esteem and was not in touch with his emotions.

29. Dr. Brooks-Hill did not purport to give a definitive answer as to why Mr. Bogart might consider suicide if his name were disclosed. He did suggest that Mr. Bogart's identity was so tied up with being a chartered accountant that being expelled from membership would be tantamount to not existing. On the other hand, it was suggested that as Mr. Bogart had reached an age at which he could be expected to retire, he might be able to accept the loss of his membership as retirement so long as there was no publicity of the fact that he had been expelled. The doctor indicated that he was less concerned with newspaper publication than with publication in *CheckMark*, whose audience is Mr. Bogart's professional peers.

30. Dr. Brooks-Hill testified that Mr. Bogart was not mentally ill, but was struggling with the dilemma of living with his reputation in tatters. Further, Dr. Brooks-Hill made it clear that Mr. Bogart regarded his conduct as entirely wrong and even characterized it as acting like a "stupid idiot". The doctor had no doubt that Mr. Bogart had a profound sense of remorse for his misconduct.

31. We recognize that the discipline committee has the discretion not to publish Mr. Bogart's name. Bylaw 575(4) provides that the member's name shall be disclosed unless the discipline committee orders otherwise. Bylaw 575(3) provides that in the case of expulsion, notice must be given to the public by publication in a newspaper distributed in the geographic area of the member's practice or residence, unless the discipline committee concludes that notice would be unnecessary for the protection of the public and would be unfair to the member.

<u>Rare and Unusual</u>

32. The issue of whether or not a name should be disclosed was the subject of two appeal committee decisions heard together in February 1990, which have been followed in many cases since. In the *Finkelman* and *Solmon* cases, which did not involve moral turpitude, the appeal committee concluded its joint reasons with the following paragraph:

> The appeal committee wishes to make a general comment about Bylaw 83(4) [the precursor to current Bylaw 575(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.

33. In our view, the risk that Mr. Bogart may take his own life if his name is disclosed does not make this a rare and unusual case which justifies withholding his name from publication.

34. This is a case involving moral turpitude. The theft was committed by a chartered accountant acting in his professional capacity. As a matter of general deterrence, members of the profession must be told that they will not escape prosecution and publicity if they misconduct themselves as Mr. Bogart did. Mr. Bogart abused the trust his clients reposed in him and stole a very substantial amount of money.

35. Chartered accountants gain the trust of members of the public by virtue of their own personal character and by virtue of the fact that they are chartered accountants. The discipline and appeal committees of this Institute give a very high priority to preserving the honesty and integrity of the designation and the public trust which chartered accountants enjoy. An open discipline process enhances public trust in the designation and in the discipline process. Disclosure of the names of disciplined members is an important part of an open disciplinary process. Withholding the name of an Institute member who steals in excess of $1,000,000 from his clients would undermine the CA profession's reputation for honesty and integrity.

Required in the Public Interest and Not Unfair to the Member

36. Mr. Bogart enjoyed an excellent reputation. He also enjoyed some social prominence. It is possible that if he were seen to have retired, charities and other organizations in Toronto having no reason not to trust him might ask for his assistance with their financial affairs. The public is entitled to know that Mr. Bogart has been expelled from membership in the Institute, and giving such notice to the public cannot be considered unfair to Mr. Bogart.

37. Each member of the panel found this decision difficult. It is an understatement to say that the prospect of a person's suicide is unsettling. We reject the submission that Mr. Bogart's life is in our hands. Members are responsible for their own misconduct, and for the consequences that flow from that misconduct. Mr. Bogart's life was and remains in his own hands.

38. Understandably, Mr. Bogart would like to be seen to be quietly retiring from his profession rather than being publicly expelled from it. The principles set out above, however, require that notice of his expulsion be given to the profession and the public, and that his name be disclosed in such notice.

DATED AT TORONTO THIS 17TH DAY OF DECEMBER, 2002
BY ORDER OF THE DISCIPLINE COMMITTEE

B.A. TANNENBAUM, FCA – DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.I. COWAN, CA
A. HANSON, CA
D.O. STIER, CA
B. RAMSAY (Public representative**)**

APPEAL COMMITTEE re Peter T. Bogart

ORDER IN THE MATTER OF: An appeal by **PETER TEIGNMOUTH BOGART**, a suspended member of the Institute, of the Order of the Discipline Committee made on September 9, 2002, pursuant to the bylaws of the Institute, as amended.

ORDER MADE APRIL 29, 2003

HAVING heard and considered the submissions made on behalf of Peter T. Bogart, and on behalf of the professional conduct committee, upon Mr. Bogart's appeal of the Decision and Order of the Discipline Committee made on September 9, 2002, and upon reviewing all of the documentation filed by the parties, the Appeal Committee orders that Mr. Bogart's appeal be and it is hereby dismissed without costs.

DATED AT TORONTO THIS 6TH DAY OF MAY, 2003
BY ORDER OF THE APPEAL COMMITTEE

BRYAN W. STEPHENSON, BA, LLB
SECRETARY – APPEAL COMMITTEE

APPEAL COMMITTEE re Peter T. Bogart

DECISION AND REASONS IN THE MATTER OF: An appeal by **PETER TEIGNMOUTH BOGART**, a suspended member of the Institute, of the Order of the Discipline Committee made on September 9, 2002, pursuant to the bylaws of the Institute, as amended.

DECISION AND REASONS FOR DECISION MADE APRIL 29, 2003

1. This appeal was heard by the appeal committee of the Institute of Chartered Accountants of Ontario on April 9 and 29, 2003. Mr. Paul Farley appeared on behalf of the professional conduct committee, and Mr. Peter Lindsay appeared for and with Mr. Bogart.

2. The relief sought in the Notice of Appeal was for an order deleting paragraph 4 of the discipline committee's order relating to the giving of notice of its decision and order, or alternatively an order varying paragraph 4 to provide for the giving of notice without disclosing Mr. Bogart's name.

PARTIES' SUBMISSIONS ON APPELLANT'S MOTION TO ADMIT FRESH EVIDENCE

3. At the outset of the hearing on April 9, after confirming that Mr. Bogart was appealing only that part of the discipline committee's order relating to publication of his name, Mr. Lindsay advised that he wished to file a document entitled "Applicant's Document Brief Before The Appeal Committee". The committee secretary indicated that he had received the document brief on April 7 but had not distributed it to the members of the panel prior to the hearing because he had been advised by Mr. Farley that it was the professional conduct committee's intention to raise an objection to its distribution. The chair asked Mr. Lindsay to explain the nature of the document which he wished to submit to the panel.

4. Mr. Lindsay indicated that the materials he wished to introduce were highly relevant to Mr. Bogart's case. He submitted that the new evidence would show the precarious nature of Mr. Bogart's mental health, and that by publishing his name his life would be endangered. He stated as well that Mr. Bogart's victims and his immediate family would also indirectly suffer from the public exposure. The new evidence sought to be introduced consisted of:

- a letter from the victims' new accountant expressing his clients' views on publication of Mr. Bogart's name;
- an updated report from Mr. Bogart's psychiatrist;
- a letter from Mr. Bogart's son expressing his concerns as to the impact on him and his children of his father's name being published; and
- an affidavit signed by Mr. Bogart indicating that he will not in future take on any position that entails financial responsibility.

5. Mr. Lindsay stated that under Bylaw 622 the appeal committee could admit into evidence any documents relevant to the subject matter of the hearing, and that he was prepared to show the relevance of each of the new documents he wished to submit. In addition, he stated that the courts tend to be relatively open to the acceptance of new evidence in the context of sentencing.

6. Mr. Farley submitted that this new material should not be admitted as evidence, and that Bylaw 622 had to be read in context. He pointed out that the appeal committee's Bylaw 622 replicated the discipline committee's Bylaw 567, and that it and many other 600 series bylaws were passed in order to give the appeal committee the same powers as the discipline committee in situations in which it required them. Such powers are only required, he submitted, when the appeal committee is conducting a hearing *de novo*, and not when it is conducting the usual form of appeal as it is in this case, which is an appeal based on the record of the proceeding before the discipline committee for the purpose of determining whether or not, on the basis of the evidence before it, the discipline committee erred in any part of its decision or order.

7. After reviewing the submissions of counsel for the appellant and counsel for the professional conduct committee, the panel deliberated to determine the admissibility of the appellant's document brief.

8. Upon deliberation, the panel determined that it would require formal submissions to be made on the issue of the admissibility of the appellant's document brief, including citations of relevant case law. In the course of attempting to identify a new date for the resumption of the hearing, it became apparent that it might not be possible to reconvene with all the same panel members. Both Mr. Lindsay and Mr. Farley agreed that as no substantive issues had yet been dealt with on the appeal the panel was not seized of the matter, and neither had an objection to a differently constituted panel continuing with of the hearing.

9. Accordingly, with the agreement of both counsel, the chair stipulated as follows:

- that the hearing would reconvene on April 29, 2003;
- that written submissions from both counsel would be required to be delivered to the appeal committee secretary by no later than noon on April 24, 2003; and
- that the secretary would establish a new panel consisting of as many of the original panel members as possible, on the understanding that an identical panel was not a requirement for the continuation of the hearing.

10. On April 29, 2003 the appeal committee reconvened with three of the original panel members including the chair, and with two new members not in attendance on April 9. Neither counsel objected to the reconstituted panel.

11. The chair opened the hearing and requested Mr. Lindsay to make his submissions on the issue of the admissibility of the four documents contained in the appellant's document brief. This document brief was not entered into evidence, though later in the hearing it was marked as Document A for identification purposes.

12. Mr. Lindsay opened his remarks by observing that although Mr. Farley had objected to the admissibility of the four documents, when asked on April 9 whether he wished to cross-examine on any of them Mr. Farley indicated that he did not. Mr. Lindsay then indicated that the rules with respect to the admissibility of evidence before this type of tribunal were not the same as before a criminal court, and that Bylaw 622 provided for the admission of evidence shown to be relevant to the subject matter of the proceeding. He submitted that his four documents were relevant to the issue of publication, which was the only issue on appeal, and that therefore they should be admitted into evidence in the proceeding.

13. Mr. Lindsay referred to various cases and excerpts from legal publications to support his submission that administrative tribunals are not bound by traditional rules of evidence which were developed for the courts, and that under Ontario's *Statutory Powers Procedure Act* (SPPA) tribunals may admit evidence at a hearing as long as it can be shown to be relevant. He submitted that all four documents were relevant to the proceeding and thus met the test for admissibility.

14. Mr. Lindsay made the following reference to the 2000 case of *R. v. Levesque*, in which the Supreme Court of Canada reviewed its 1979 decision in the case of *R. v. Palmer*. The four criteria regarding admissibility of fresh evidence on appeal are discussed in *R.v. Levesque* as follows:

A. The Criteria Laid Down in Palmer

> (14) In Palmer, supra, this Court considered the discretion of a court of appeal to admit fresh evidence pursuant to s. 610 of the Criminal Code, the predecessor of s. 683. After emphasizing that, in accordance with the wording of s. 610, the overriding consideration must be "the interests of justice", McIntyre J. set out the applicable principles, at p. 775:
>
> (1) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that his general principle will not be applied as strictly in a criminal case as in civil cases: see McMartin v. The Queen.
>
> (2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial.
>
> (3) The evidence must be credible in the sense that it is reasonably capable of belief, and
>
> (4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.
>
> In R. v M. (P.S.) (1992), 77 C.C.C. (3d) 402 (Ont. C.A.), at p. 410, Doherty J.A. wrote the following concerning these principles:
>
> The last three criteria are conditions precedent to the admission of evidence on appeal. Indeed, the second and third form part of the broader qualitative analysis required by the fourth consideration. The first criterion, due diligence, is not a condition precedent to the admissibility of "fresh" evidence in criminal appeals, but is a factor to be considered in deciding whether the interests of justice warrant the admission of the evidence: McMartin v. The Queen, supra, at pp. 148-50; R. v. Palmer, supra, at p. 205.

15. Mr. Lindsay stated that the four criteria referred to in *R. v. Levesque* can be applied as follows in Mr. Bogart's case, when considering the four documents in his document brief:

Due Diligence

- The letter at Tab 1 responds to a false suggestion made by counsel for the professional conduct committee at the discipline hearing, which was not anticipated. It is not a failure of due diligence to fail to anticipate false suggestions made by opposing counsel.

- The letter at Tab 2 is a report from Mr. Bogart's psychiatrist written since the discipline hearing, and therefore by its very nature not available at the time the sanction was ordered. Such materials have specifically been held to satisfy the due diligence requirement (see *R. v. Levesque*, paragraph 32).

- The letter at Tab 3 was not available at the time the sanction was ordered because Mr. Bogart's shame over his actions prevented his ability to tell his son the story.

- The affidavit at Tab 4 responds to a comment by the discipline committee in its reasons, at paragraph 36, which was not raised before the discipline committee, and therefore cannot be said to be a failure of due diligence.

Relevance

The issue of relevance was conceded by Mr. Farley.

Credibility

None of the new evidence proposed to be introduced can be the subject of a credibility issue as counsel for the respondent specifically declined to cross-examine on any of the new evidence.

Affect On Result

- With respect to the letter at Tab 1, the presence of factually correct information rather than incorrect suggestions could affect the result. Surely the appeal committee would want to correct significant errors in the record.

- With respect to the letter at Tab 2, knowledge as to the current risk of suicide could affect the appeal committee's decision, and certainly deserves consideration by the committee. It would fly in the face of the interests of justice, as emphasized in cases such as *Palmer* and *Levesque*, for the appeal committee not to look at the current risk of suicide.

- With respect to the letter at Tab 3, the impact of sentence on Mr. Bogart's family is an important consideration which could affect the decision. (see for example *R. v. Nikkanen*, a 1999 decision of the Ontario Court of Appeal, Exhibit 7, Tab 2).

- With respect to the affidavit at Tab 4, this bears on a critical part of the discipline committee's reasons and thus could potentially affect the appeal committee's decision.

For all these reasons, Mr. Lindsay submitted that the appeal committee should admit the new evidence so as to arrive at a just result.

16. Mr. Farley responded by first pointing out that the appellant had not followed proper procedure in attempting to introduce fresh evidence, in that he had failed to file an application to introduce this new evidence on the appeal supported by an affidavit in order to provide the factual foundation for a proper consideration of whether or not the evidence should be received by the appeal committee in this particular case.

17. Mr. Farley cited the *Palmer* and *Levesque* cases as the definitive precedents dealing with the introduction of fresh evidence on appeal, and indicated his agreement with Mr. Lindsay's earlier submission that the more recent case of *Levesque* confirmed that there is no distinction in the application of the *Palmer* criteria between a conviction appeal and a sentence appeal.

18. Mr. Farley argued that Bylaw 622, being the equivalent of Bylaw 567 dealing with the admission of evidence by the discipline committee, related only to the admission of evidence by the appeal committee when conducting a hearing *de novo*, which is a specific form of hearing very different from the typical form of appeal, and which is only available in the circumstances referred to in Bylaw 653, ie. when it is alleged that either there has been a denial of natural justice or there exists a deficiency in the discipline hearing transcript, neither of which had been alleged by the appellant in this case. He urged the panel not to allow the introduction of new evidence as the effect would be to transform the appeal into a hearing *de novo*, which would not be appropriate in the circumstances of this case.

19. Mr. Lindsay responded that the admission into evidence of the four documents under consideration would not amount to relitigation of the case, and urged the panel to look at the documents before deciding whether or not to admit them as evidence.

20. At the conclusion of counsels' submissions, the panel deliberated and decided that it would receive and review Mr. Lindsay's documents but reserve until the end the determination as to whether or not they should be admitted into evidence.

21. Counsel then commenced making their respective submissions on the substantive issue of publication of Mr. Bogart's name.

PARTIES' SUBMISSIONS ON THE APPEAL OF PUBLICATION OF NAME

22. The discipline committee found Mr. Bogart guilty of four charges of professional misconduct under Rule 201.1, and then went on to make the following order:

> ORDER
>
> IT IS ORDERED in respect of the charges:
>
> 1. THAT Mr. Bogart be reprimanded in writing by the chair of the hearing.
>
> 2. THAT Mr. Bogart be and he is hereby fined the sum of $20,000, 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. Bogart be and he is hereby expelled from membership in the Institute.

4. THAT notice of this Decision and Order, disclosing Mr. Bogart'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. Bogart surrender his certificate of membership in the Institute and his certificate of Fellowship in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

23. The only item under appeal was the publication of Mr. Bogart's name pursuant to paragraph 4. The reason cited for the appeal in the Notice of Appeal was the "very grave risk that Mr. Bogart would commit suicide if his name was published in CheckMark or in the Globe and Mail".

24. Mr. Lindsay submitted that the discipline committee erred in not giving sufficient weight to the uncontradicted oral evidence of Mr. Bogart's psychiatrist, Dr. Robin Brooks-Hill, relating to the grave risk of suicide. He indicated that while publication is a very important general deterrent in the discipline process, the desirability of publication should be reconsidered when the specific effect of it might be the death of a member.

25. Mr. Lindsay also submitted that the discipline committee erred in holding that this case was not a "rare and unusual" case warranting the withholding of the member's name from publication, when it was the only known case in the history of the discipline committee in which a psychiatrist attended and gave oral evidence as to the very grave risk of a member's committing suicide in the event of such publication.

26. Mr. Lindsay submitted that the discipline committee erred in not giving any weight to its own decision in the case of Marvin Howard Otto, a case which suggested that the existence of evidence of sufficient risk of suicide could justify interfering with the normal operation of Bylaw 575(3) relating to newspaper publication. He stated that the discipline committee did not even refer to the Otto case in its reasons in this case, and that it was an error not to make reference at all to a similar case cited by the member, even if it was only to explain why the reasoning in that case was not seen to apply to this case.

27. Mr. Lindsay stated that Mr. Bogart is now sixty-six years old, is no longer practising, and has no intention of ever being involved in any type of financial work in the future. Accordingly, he submitted, it was not necessary for the protection of the public that Mr. Bogart's name be published. He further submitted that the statement in the discipline committee's reasons that it was possible Mr. Bogart might at some point offer financial advice to someone who, in the absence of publication, would not be warned of his expulsion, was mere speculation on the committee's part and amounted to error.

28. Mr. Lindsay also submitted that the discipline committee erred in not considering the specific evidence of Dr. Brooks-Hill to the effect that Mr. Bogart was not emotionally equipped to deal with the effects of publication, and that the committee's statement in paragraph 37 of its reasons that “Mr. Bogart’s life was and remains in his own hands” was effectively not correct.

29. Mr. Farley responded that at the discipline committee hearing Mr. Lindsay basically admonished the members of the discipline panel that if they made the usual order for this type of misconduct, which would be an order including publication of Mr. Bogart's name, it would be their responsibility if Mr. Bogart committed suicide as a result.

30. Mr. Farley indicated that this case represented the most serious fact situation he had ever seen, involving a huge breach of trust in which more than $1 million was stolen from clients in 40 separate transactions over 5 years. In addition, at the end of the day, Mr. Bogart did not turn himself in out of conscience, but was discovered as a result of a bank monitoring procedure.

31. Mr. Farley submitted that this was a major case of moral turpitude, that the penalty had to fit the crime, and that the consequences of imposing the penalty could not be borne by either the members of the discipline committee panel or the members of the appeal committee panel. He stated that it is only in rare and unusual cases that a member's name is withheld from publication, particularly when the case involves moral turpitude. The discipline committee specifically rejected the submission of Mr. Bogart's counsel that the risk of his client taking his own life made this a rare and unusual case warranting the withholding of Mr. Bogart's name from publication, and so stated in paragraph 33 of its reasons: “In our view, the risk that Mr. Bogart may take his own life if his name is disclosed does not make this a rare and unusual case which justifies withholding his name from publication.”

32. Mr. Farley emphasized that the role of the appeal committee was to ascertain whether or not the discipline committee erred in making its order as to publication. Its role was not to decide whether it agreed or disagreed with the determination of the discipline committee to publish but whether the discipline committee's decision to publish was unreasonable in the circumstances, or outside the range of sanctions appropriate to the misconduct, or inconsistent with sanctions previously imposed for similar misconduct.

33. Mr. Farley referred to Document A and commented as follows:

- Tab 1 – The request of Mr. Bogart's former clients – the victims of his misconduct – that Mr. Bogart's name not be published because it would identify them was not new information, but had been made known at the discipline hearing.
- Tab 2 – The update from Dr. Brooks-Hill adds nothing new concerning Mr. Bogart's state of mental health to the information known at the discipline hearing.
- Tab 3 – The information contained in the letter from Mr. Bogart’s son could have been presented to the discipline committee had Mr. Bogart decided to tell his son of his misconduct at the time of or prior to his discipline hearing. Having chosen not to do so at the proper time, it was now improper to attempt to introduce the letter upon the appeal.
- Tab 4 – It was improper to attempt to refute by way of an affidavit from Mr. Bogart a comment made by the discipline committee in its reasons, particularly when the purpose of the comment was to specifically address a statement made by Mr. Bogart.

34. Mr. Farley submitted that it is not incumbent upon a discipline panel to refer in its reasons to every case put before it, and that the discipline panel in this case did not err in not making reference to the *Otto* case. He stated that the discipline committee exercised its discretion in a reasoned fashion, fully informed of all the facts and relevant cases, and that as a result its decision should not be interfered with.

35. Mr. Farley indicated that the professional conduct committee had not asked for costs before the discipline committee as the hearing before that committee took place before the release of the Council's policy statement on costs, but that he was seeking costs on the appeal. The bill of costs presented was filed as Exhibit 19.

36. When asked to respond, Mr. Lindsay indicated that Mr. Bogart was not looking for excuses in an attempt to avoid publication, nor threatening to commit suicide as a ploy to attempt to avoid it. Instead, he submitted, evidence that publication could trigger a grave risk of suicide came from the sincere account of a licensed psychiatric professional to underscore the significant risks that were involved in this particular case. As to costs, Mr. Lindsay indicated that this case was not about costs but was a plea for mercy to protect the life of his client.

PANEL'S DETERMINATION ON THE MOTION TO ADMIT FRESH EVIDENCE

37. In considering the request to receive the fresh evidence contained in Document A, the panel had to consider on what basis it should decide whether or not this evidence should be admitted on appeal from the discipline committee's order.

38. The panel concluded that it was not bound by the rules of evidence as applied in criminal or civil cases, and that it had a discretion as to whether or not to receive the fresh evidence.

39. Submissions were made with respect to Bylaw 622, which provides as follows:

> 622 Admission of evidence
>
> To the extent permitted by Section 15 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, or other provision or statute for the time being in force, the appeal committee may admit as evidence, whether or not given or proven under oath or affirmation or admissible as evidence in a court, any oral testimony and any document or other thing relevant to the subject matter of the proceedings and may act on such evidence, but may exclude anything unduly repetitious.

40. Bylaw 622 is permissive in that it indicates that the appeal committee may admit evidence relevant to the proceeding. Except in its reference to the appeal committee instead of to the discipline committee, the bylaw is identical to Bylaw 567 which governs the admission of evidence during a discipline committee hearing.

41. Although relevancy may be the primary criterion in terms of admission of evidence when conducting a discipline committee hearing or a *de novo* hearing pursuant to Bylaw 653, additional criteria need to be considered when a request is made to admit fresh evidence on an appeal from a decision or order of the discipline committee. This is because normally the appeal committee bases its decisions solely on the evidentiary record as established at the discipline hearing together with the submissions made by the parties at the appeal hearing.

42. In deciding whether to admit fresh evidence on appeal, the appeal committee has to balance the administration of justice with fairness to the individual member. If fresh evidence was routinely allowed on appeals from decisions and orders of the discipline committee, it would undermine the discipline committee hearing process by creating in effect a "second kick at the can" for every party dissatisfied with the result obtained before the discipline committee. In every case there could be two hearings instead of one, the appeal committee no longer hearing appeals but conducting hearings *de novo*. Essentially, the appeal committee would be transformed into a second discipline committee. In addition to creating a situation in which there would be a lack of finality as to the evidentiary record, the routine admission of fresh evidence on appeal would alter the normal standard of appellate review.

43. Accordingly, there must be compelling reasons for the appeal committee to admit evidence not tendered at the discipline committee hearing.

Criteria to be Considered

44. Although the appeal committee is not bound by criminal or civil law precedents, the criteria that have been considered in criminal and civil courts in deciding whether to admit fresh evidence on an appeal are instructive. The four criteria which normally have to be met in a civil or criminal court were laid down by the Supreme Court of Canada in *Palmer*, and reaffirmed in *Levesque*, and were set out earlier in these reasons.

45. The *Levesque* case confirmed that the application of the *Palmer* criteria applies to sentencing appeals as well as to conviction appeals. Speaking for the majority, Gonthier J. stated:

> Although the rules concerning sources and types of evidence are more flexible in respect of sentence, the criteria for admitting fresh evidence on appeal are the same, regardless of whether the appeal relates to a verdict or a sentence.…In any case, it is my belief that the criteria stated by this Court in Palmer already call for a relaxed and flexible application and could hardly be relaxed any further.

46. The panel concluded that in this case the fresh evidence should not be admitted. In coming to this conclusion we considered the four criteria described above, and considered the admission of each document separately as outlined below.

<u>Tab 1</u>

47. Tab 1 is a letter from the victims' new accountant dated April 2, 2003 expressing his clients' views on the publication of Mr. Bogart's name.

48. It was submitted by Mr. Lindsay that there was some confusion at the discipline hearing as to the position of the victims regarding publication of Mr. Bogart's name, and that it was appropriate for the appeal committee to admit the letter at Tab 1 into evidence in order to clear up that confusion and help ensure that the discipline committee's decision to publish was not made at least partially on the basis of unclear evidence. However, the position of the victims was never unclear to the discipline committee. In addition to the exchange between the parties' counsel and counsel for the discipline committee on the issue (see the transcript beginning at page 73), part of the evidence before the discipline committee was a letter from Mr. Bogart to the professional conduct committee dated May 7, 2002, which was contained at Tab 1 of Peter Bogart's Document Brief filed as Exhibit 5 at the discipline hearing [reproduced at Tab 9 of the Appeal Book filed as Exhibit 1 at the appeal hearing]. Mr. Bogart stated the following near the bottom of page 2 of his letter:

> The "complainants", my former clients, have specifically requested that they remain totally confidential. Since I was engaged by these individuals for 11 years, any publication of my name would identify them as the party to the transaction as many people in the business community were aware of my association with them.

49. Accordingly, as there was evidence before the discipline panel from Mr. Bogart himself as to the impact of the publication of his name on his former clients, the letter at Tab 1 of Document A which Mr. Lindsay requested be entered into evidence upon the appeal could not be considered fresh evidence.

50. The panel also concluded that had it been introduced at the discipline hearing it is unlikely this letter would have affected the result.

Tab 2

51. The letter at Tab 2 from Dr. Brooks-Hill dated April 3, 2003 was an update to his previous opinion letters which had been filed at the discipline hearing. While accepting that there certainly would be circumstances in which a psychiatric report prepared subsequent to a discipline hearing attesting to a material or significant change in the medical condition of the member since the date of the hearing would be properly admissible on appeal, the panel concluded in this case that the updated report did not provide any new information or medical opinions as to Mr. Bogart's condition to that which had been provided to the discipline committee. Accordingly, in the panel's opinion, this last letter from Dr. Brooks-Hill if combined with the other evidence adduced at the discipline hearing would not have affected the result.

Tab 3

52. Tab 3 is a letter provided by Mr. Christopher Bogart, Peter Bogart's son, dated March 24, 2003. Mr. Lindsay submitted that this letter was new information not before the discipline committee, and that it should be admitted as evidence upon the appeal as it was relevant to the issue of publication. The panel noted, however, that on page 3 of the letter of May 7, 2002 to the professional conduct committee earlier referred to, Mr. Bogart stated the following:

> Our son, a lawyer in the highly competitive US market, is on the brink of a major career move with a very large US corporation. Any publication of my name would seriously jeopardise his chances and possibly ruin his advancement.

53. Thus, the discipline committee had some evidence from Mr. Bogart as to what impact the publication of his name might have on his son. In addition, this evidence could have been adduced at the discipline hearing with the exercise of due diligence. Moreover, it is unlikely that this evidence when combined with the other evidence adduced at the discipline hearing would have affected the result. Accordingly, the panel concluded that the letter at Tab 3 should not be admitted as fresh evidence.

Tab 4

54. Tab 4 is an affidavit sworn by Mr. Bogart on April 6, 2003 in which he states the following:

> I am aware of the expressed concern of the Discipline Committee that it is possible that I might be asked to assist some charity or other organization with their financial affairs in the future. I state categorically and without hesitation that I will never ever at any time assist any charity, organization or member of the public with their financial affairs in the future.

55. This affidavit was sworn in response to paragraph 36 of the reasons of the discipline committee, which stated as follows:

> Mr. Bogart enjoyed an excellent reputation. He also enjoyed some social prominence. It is possible that if he were seen to have retired, charities and other organizations in Toronto having no reason not to trust him might ask for his assistance with their financial affairs. The public is entitled to know that Mr. Bogart has been expelled from membership in the Institute, and giving such notice to the public cannot be considered unfair to Mr. Bogart.

56. We are not surprised that the discipline panel had a concern about Mr. Bogart's continuing to be asked to take on volunteer and charitable work by organizations not aware of either his wrongdoing or the consequences of his wrongdoing, in light of the following stated by Mr. Bogart on page 2 of his May 7, 2002 letter:

> My volunteer life included establishing and supervising ICAO income tax clinics at the Canadian National Institute for the Blind ("CNIB") for 22 years during which we prepared 300 to 400 personal income tax returns for blind individuals. I was also on the public relations committee of the ICAO but had to resign after 1 year due to continual out of country business travel. I was also a board member of Women's College Hospital for 12 years during which I was chairman of the finance committee, chairman of the audit committee and a member of the executive. Recently I was on a board committee of CNIB to decide what to do with its property on Bayview Avenue…. Once this proceeding has been finalized, I plan to volunteer wherever I can be put to use.

57. Given the nature of the volunteer positions Mr. Bogart had held in the past, and his indication that he planned to continue to volunteer in future, the concern expressed by the discipline committee in paragraph 36 of its reasons was understandable and appropriate. To allow evidence to go in on appeal that would address the discipline committee's concern by reversing the position of the member that gave rise to that concern would be entirely inappropriate.

58. It would be dangerous to allow an appellant to address by way of fresh evidence on appeal certain conclusions or comments contained in the reasons of the discipline committee. This is particularly so when the evidence sought to be introduced is simply a present statement as to future intentions, albeit a statement made under oath.

59. The panel concluded that Mr. Bogart's affidavit taken with all the other evidence adduced at the discipline hearing would not have affected the result.

Summary

60. In summary, exercising our discretion and considering the four criteria set out in *Palmer*, the panel concluded that none of the four documents tendered as fresh evidence by Mr. Bogart should be admitted as evidence on the appeal. We concluded that if there was any unfairness to Mr. Bogart resulting from this decision, it was outweighed by the negative impact admitting such new evidence would have on the administration of the Institute's disciplinary process.

Hearing *De Novo*

61. Bylaw 653 sets out when a party can request that an appeal proceed by way of a hearing *de novo*, and pursuant to that bylaw the appeal committee can decide whether all or part of the hearing should proceed in that fashion.

62. Bylaw 653 stipulates that the only bases upon which a hearing *de novo* may be ordered are when there has been an allegation either of a denial of natural justice or a deficiency in the transcript of the discipline committee hearing. If a party wishes to request a hearing *de novo* the party must do so within the time specified in the bylaws for the filing of an appeal or cross-appeal, as the case may be.

63. It is somewhat difficult to draw a distinction between a request to admit fresh evidence and a request for a hearing *de novo*, particularly if the *de novo* hearing request is for only a partial *de novo* hearing. Arguably the admission of even one new document upon an appeal renders the appeal at least a partial hearing *de novo*.

Procedure on Request for Admission of Fresh Evidence on Appeal

64. In this case, the notification from Mr. Bogart's counsel that he intended to tender at the appeal hearing certain documentary evidence that had not been before the discipline committee came only two days prior to the scheduled April 9 appeal hearing. Mr. Lindsay sent his document brief, later labelled Document A at the hearing on April 29, to the appeal committee secretary on April 7. Counsel to the professional conduct committee informed the secretary immediately of his objection to the document brief, as a result of which it was not distributed to the members of the appeal committee panel prior to the hearing.

65. At the outset of the appeal hearing, both counsel made submissions with respect to the admission of the document brief. However, the panel was not able to decide the issue on the basis of these submissions, as a result of which the hearing had to be adjourned to enable counsel time to research the issue and file written submissions.

66. By way of comparison, Bylaw 653 dealing with hearings *de novo* provides that a party wishing to request a hearing *de novo* must do so within the time prescribed in the bylaws for the filing of the notice of appeal or cross-appeal, as the case may be.

67. Without in any way wishing to bind or commit the appeal committee, the panel thought it might be helpful to provide some direction as to how any future cases involving requests for the admission of fresh evidence on appeal might be dealt with, and so suggests the following guidelines:

1. An appeal of a decision or order of the discipline committee should be conducted by the appeal committee exclusively on the basis of the evidentiary record established at the discipline committee hearing.

2. The evidentiary record of the discipline committee hearing should consist only of the decision, the order and the reasons of the discipline committee, the exhibits filed at the discipline hearing, and the official transcript of the oral evidence given at the hearing.

3. If a party wishes to adduce fresh evidence before the appeal committee it must first obtain leave from the appeal committee to do so.

4. A party wishing to tender fresh evidence on appeal must give written notice to the secretary of the appeal committee no later than the day upon which the appeal hearing date is chosen, whether the hearing date is chosen at an assignment hearing or otherwise, and the notice must identify the nature of the fresh evidence sought to be introduced together with the grounds upon which the party wishes to tender it.

5. Save and except in exceptional circumstances, (eg. the fresh evidence has only been discovered on the eve of the appeal hearing), a request to adduce fresh evidence will not be considered by the appeal committee unless the procedure set out above has been followed.

68. It is not suggested that these guidelines be considered either comprehensive or, as stated above, binding, however they might be useful should the issue of the admission of fresh evidence on appeal arise again in future.

PANEL'S DETERMINATION ON THE APPEAL OF PUBLICATION OF NAME

69. The substantive issue before the appeal committee was whether or not the discipline committee, upon considering all the evidence and submissions before it, properly exercised its discretion and imposed a sanction within the appropriate range of sanctions given the facts of this particular case. Unless there was an error in principle made, or unless the sanction imposed was not within the appropriate range of sanctions suitable to the misconduct and consistent with previous similar cases, the appeal committee will not normally disturb the penalty and substitute its judgment for that of the discipline committee.

70. In this case, the panel concluded that it should not disturb the penalty imposed by the discipline committee and substitute its own judgment. There appeared to have been no error in principle made, and the sanction imposed was within the appropriate range of sanctions suitable to the misconduct and consistent with previous similar cases. This case was a serious case of moral turpitude involving a chartered accountant's misappropriation from clients of over $1 million through 40 separate transactions spanning the course of five years. This is also the case of a member who, despite feelings of remorse after being caught, was not so remorseful as to discontinue his wrongdoing before being caught. The discipline committee gave due consideration to the arguments made by Mr. Lindsay that Mr. Bogart was not able to deal with the publication of his name, that the result of this inability was the grave risk that he might commit suicide, that the evidence of this came from the uncontradicted testimony of an experienced psychiatrist, and that the circumstances of this case clearly were and should have been treated as rare and unusual circumstances warranting the withholding of his client's name from publication. In the end, however, the discipline committee concluded that Mr. Bogart's name should be published. This conclusion was squarely within the discipline committee's discretion, and the appeal panel concluded there was no basis upon which to interfere with the exercise of this discretion.

71. As to the issue raised by Mr. Lindsay that the discipline committee erred in not having regard in its reasons to the *Otto* case, we agree with the submission made by Mr. Farley that it is not incumbent upon a panel of the discipline committee, or indeed upon a panel of the appeal committee, to specifically refer in its reasons to every case put forward by counsel. We are of the view that the discipline panel did not refer to the *Otto* case because it did not find it to be of assistance to its determination, and in this we agree. In *Otto*, the discipline panel stated that it "was not persuaded that there was sufficient evidence of a risk of suicide to interfere with the operation of Bylaw 575(3)". Apparently taking this as a proposition by the discipline committee that if there was sufficient evidence of a risk of suicide that such evidence would be or could be enough to interfere with the operation of the bylaw, Mr. Lindsay submitted that in Mr. Bogart's case there did exist sufficient evidence to override the operation of the bylaw and that the bylaw should therefore be overridden. Though sceptical that the above words from the *Otto* decision can be properly taken to stand for this proposition, we do not find it necessary to decide the issue in light of the fact that the discipline committee's reasons make it absolutely clear that the risk of suicide as a reason not to publish the name of the member was given due consideration and rejected.

Costs

72. The professional conduct committee requested that costs be assessed against Mr. Bogart, but the panel decided not to assess costs.

Panel's Order

73. So as not to detain the parties unduly at the end of a long day, we advised that we would communicate our decision to them through the appeal committee secretary and that they need not await the conclusion of our deliberations. Our decision was made known to the parties the following day, and our formal order was issued on May 6 as follows:

Having heard and considered the submissions made on behalf of Peter T. Bogart, and on behalf of the professional conduct committee, upon Mr. Bogart's appeal of the Decision and Order of the Discipline Committee made on September 9, 2002, and upon reviewing all of the documentation filed by the parties, the Appeal Committee orders that Mr. Bogart's appeal be and it is hereby dismissed without costs.

DATED AT TORONTO, THIS 30TH DAY OF JULY, 2003
BY ORDER OF THE APPEAL COMMITTEE

M.B. MARTENFELD, FCA – CHAIR
THE APPEAL COMMITTEE

MEMBERS OF THE PANEL:

R.J.L. BOWMAN, CA
L.L. WORTHINGTON, CA
E. ZAVERSHNIK, CA
B. BOWDEN (Public representative)