

Prem Paul Gupta: Summary, as Published in *CheckMark*

Prem Paul Gupta, of Oakville, was found guilty of one charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest, one charge under Rule 205 of signing or associating himself with financial statements which he knew or should have known were false or misleading, and three charges under Rule 206 of failing to perform his professional services in accordance with generally accepted standards of practice of the profession, including the recommendations set out in the *CICA Handbook*. Mr. Gupta failed to comply with the terms of a supervised practice order made against him by the discipline committee in a previous case. He issued and signed audit reports attached to materially different financial statements of a client for the same year end. In performing audit and review work for three of his clients, Mr. Gupta exhibited numerous deficiencies, including failure to adequately plan and properly execute an engagement; failure to provide proper supervision on an engagement; failure to obtain sufficient appropriate audit evidence; failure to employ sufficient enquiry, analytical procedures and discussion to allow him to assess whether information being reported on was plausible in the circumstances; and failure to document matters important to support the content of his reports. Mr. Gupta was fined \$7,500 and expelled from the Institute. His appeal was dismissed by the appeal committee.

CHARGE(S) LAID re Prem Paul Gupta

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

1. THAT, the said Paul Gupta, in or about the period December 1998 to April 1999, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the rules of professional conduct in that, while subject to a decision and order of the discipline committee dated March 30, 1998 requiring him to complete of period of supervised practice, he issued an audit report dated April 30, 1999 on the financial statements of the Oakville Branch of the Order of St. John for the year ended December 31, 1998 without complying with the terms of the order, in that:
 - (a) he did not have his practice supervisor review and approve a client acceptance review, detailed audit planning memorandum, and budget prior to commencing the audit; and
 - (b) he did not have his practice supervisor review and approve the audit working papers and financial statements prior to issuing his audit opinion.
2. THAT, the said Paul Gupta, in or about the period May to October 1998, while engaged to perform an audit of the Kashechewan First Nation, signed or associated himself with financial statements which he knew or should have known were false or misleading in that he issued and signed audit reports attached to materially different financial statements for Kashechewan First Nation, all for the year ended March 31, 1998, contrary to Rule 205 of the rules of professional conduct.
3. THAT, the said Paul Gupta, in or about the period December 1998 to April 1999, while engaged to perform an audit of the financial statements of the Oakville Branch of the Order of St. John for the year ended December 31, 1998, failed to perform his professional services in accordance with the standards of practice of the profession including the recommendations set out in the *CICA Handbook*, contrary to Rule 206 of the rules of professional conduct, in that:
 - (a) the report does not include the standard qualification for completeness of donations revenues;
 - (b) he failed to obtain sufficient appropriate audit evidence to support the item "Accounts receivable/GST, \$8,721";
 - (c) he failed to obtain sufficient appropriate audit evidence to support the item "Accounts payable and accrued liabilities, \$36,023";
 - (d) he failed to ensure that the financial statements disclosed the quantum of capital expenditures and expenses;

- (e) he did not disclose the method used to account for contributions; and
 - (f) he failed to obtain sufficient appropriate audit evidence to support the item "Fundraising, grants, donations, \$19,419".
4. THAT, the said Paul Gupta, in or about the period March to October 1998, while he was engaged to perform an audit of the financial statements of Kashechewan First Nation for the year ended March 31, 1998, failed to perform his professional services in accordance with the standards of practice of the profession including the recommendations set out in the *CICA Handbook* when he issued the audit report dated October 7, 1998, contrary to Rule 206 of the rules of professional conduct, in that:
- (a) he failed to obtain sufficient appropriate audit evidence to support the item "Cash, \$996,676";
 - (b) he failed to obtain sufficient appropriate audit evidence to support the item "Accounts receivable, \$806,936";
 - (c) he failed to obtain sufficient appropriate audit evidence to support the item "Deferred revenue, \$1,279,943";
 - (d) the audit report incorrectly states that the financial statements have been prepared in accordance with generally accepted accounting principles when it should have disclosed the prescribed basis of accounting on which they were prepared;
 - (e) he failed to ensure that the capital assets were carried on the balance sheet in a separate capital asset fund as required for First Nations' financial statements;
 - (f) he failed to document matters that are important to support the content of his report;
 - (g) he did not ensure that other persons performing the assurance engagement were properly supervised;
 - (h) he failed to communicate with the secondary auditor to assist in obtaining reasonable assurance that he could rely on the secondary auditor's figures;
 - (i) he failed to obtain a written communication from the secondary auditor identifying his report, acknowledging that the primary auditor intends to rely on it, and setting out the required representations; and
 - (j) not having acquired the necessary audit assurance regarding the secondary auditor's figures, he did not review the working papers of the secondary auditor.

5. THAT, the said Paul Gupta, in or about the period December 1998 to March 1999, while he was engaged to perform a review of the financial statements of Valroop Canada Inc. o/a Marlin Travel for the year ended December 31, 1998, failed to perform his professional services in accordance with the standards of practice of the profession, including the recommendations set out in the *CICA Handbook*, contrary to Rule 206 of the rules of professional conduct, in that;
- (a) he did not adequately plan and properly execute the engagement;
 - (b) he did not employ sufficient enquiry, analytical procedures and discussion to allow him to assess whether the information being reported on was plausible in the circumstances;
 - (c) he did not document matters that are important to support the content of his report;
 - (d) he did not ensure there was a cash flow statement; and
 - (e) he failed to determine whether the interest expense arose from related party transactions and therefore did not make the appropriate disclosure in the financial statements.

Dated at Toronto this 12th day of December, 2000.

W. R. SCHMIDT, CA – DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Prem Paul Gupta

DECISION AND ORDER IN THE MATTER OF: Charges against **PREM PAUL GUPTA, CA**, a member of the Institute, under **Rules 201.1, 205 and 206**, of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE MAY 24, 2001

THAT, having seen, heard and considered the evidence, including the agreed statement of facts, filed, particular (a) of charge No. 1 having been withdrawn, and having heard the plea of guilty to charges Nos. 1 as amended, 3, 4 and 5, the Discipline Committee finds Prem Paul Gupta guilty of charges Nos. 1 as amended, 2, 3, 4 and 5.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Gupta be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Gupta be and he is hereby fined the sum of \$7,500, 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. Gupta be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Gupta'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* and the *Oakville Beaver*.
5. THAT Mr. Gupta 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 31ST DAY OF MAY, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Prem Paul Gupta

REASONS FOR DECISION AND ORDER IN THE MATTER OF: Charges against **PREM PAUL GUPTA, CA**, a member of the Institute, under **Rules 201.1, 205 and 206**, of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE MAY 24, 2001

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario convened on May 23, 2001 to hear charges made by the professional conduct committee against the member, Prem Paul Gupta, CA. The hearing continued and concluded on May 24, 2001. The decision and order was made known at the hearing on May 24, and the parties were told the written reasons would follow.
2. On May 25, counsel for Mr. Gupta asked by letter that the committee reconvene on May 31 to hear submissions under Bylaw 583 as to why Mr. Gupta should not be immediately suspended. We did reconvene on that day, and our decision was made known after we heard the submissions and deliberated.
3. These reasons, given in writing pursuant to Bylaw 574, include the charges and the decision and order made on May 24. The formal decision and order was dated May 31, and was sent to Mr. Gupta that day.
4. At the hearing, the professional conduct committee was represented by Mr. Brian Bellmore. He was accompanied by Mr. Michael Cashion, the investigator appointed by the professional conduct committee. Mr. Gupta was present and represented by his counsel, Mr. Frank Bowman.

THE CHARGES

5. The five charges made against Mr. Gupta by the professional conduct committee on December 12, 2000, read as follows:

1. THAT, the said Paul Gupta, in or about the period December 1998 to April 1999, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the rules of professional conduct in that, while subject to a decision and order of the discipline committee dated March 30, 1998 requiring him to complete of *[sic]* period of supervised practice, he issued an audit report dated April 30, 1999 on the financial statements of the Oakville Branch of the Order of St. John for the year ended December 31, 1998 without complying with the terms of the order, in that:
 - (a) he did not have his practice supervisor review and approve a client acceptance review, detailed audit planning memorandum, and budget prior to commencing the audit; and
 - (b) he did not have his practice supervisor review and approve the audit working papers and financial statements prior to issuing his audit opinion.

2. THAT, the said Paul Gupta, in or about the period May to October 1998, while engaged to perform an audit of the Kashechewan First Nation, signed or associated himself with financial statements which he knew or should have known were false or misleading in that he issued and signed audit reports attached to materially different financial statements for Kashechewan First Nation, all for the year ended March 31, 1998, contrary to Rule 205 of the rules of professional conduct.
3. THAT, the said Paul Gupta, in or about the period December 1998 to April 1999, while engaged to perform an audit of the financial statements of the Oakville Branch of the Order of St. John for the year ended December 31, 1998, failed to perform his professional services in accordance with the standards of practice of the profession including the recommendations set out in the *CICA Handbook*, contrary to Rule 206 of the rules of professional conduct, in that:
 - (a) the report does not include the standard qualification for completeness of donations revenues;
 - (b) he failed to obtain sufficient appropriate audit evidence to support the item "Accounts receivable/GST, \$8,721";
 - (c) he failed to obtain sufficient appropriate audit evidence to support the item "Accounts payable and accrued liabilities, \$36,023";
 - (d) he failed to ensure that the financial statements disclosed the quantum of capital expenditures and expenses;
 - (e) he did not disclose the method used to account for contributions; and
 - (f) he failed to obtain sufficient appropriate audit evidence to support the item "Fundraising, grants, donations, \$19,419".
4. THAT, the said Paul Gupta, in or about the period March to October 1998, while he was engaged to perform an audit of the financial statements of Kashechewan First Nation for the year ended March 31, 1998, failed to perform his professional services in accordance with the standards of practice of the profession including the recommendations set out in the *CICA Handbook* when he issued the audit report dated October 7, 1998, contrary to Rule 206 of the rules of professional conduct, in that:
 - (a) he failed to obtain sufficient appropriate audit evidence to support the item "Cash, \$996,676";
 - (b) he failed to obtain sufficient appropriate audit evidence to support the item "Accounts receivable, \$806,936";
 - (c) he failed to obtain sufficient appropriate audit evidence to support the item "Deferred revenue, \$1,279,943";

- (d) the audit report incorrectly states that the financial statements have been prepared in accordance with generally accepted accounting principles when it should have disclosed the prescribed basis of accounting on which they were prepared;
 - (e) he failed to ensure that the capital assets were carried on the balance sheet in a separate capital asset fund as required for First Nations' financial statements;
 - (f) he failed to document matters that are important to support the content of his report;
 - (g) he did not ensure that other persons performing the assurance engagement were properly supervised;
 - (h) he failed to communicate with the secondary auditor to assist in obtaining reasonable assurance that he could rely on the secondary auditor's figures;
 - (i) he failed to obtain a written communication from the secondary auditor identifying his report, acknowledging that the primary auditor intends to rely on it, and setting out the required representations; and
 - (j) not having acquired the necessary audit assurance regarding the secondary auditor's figures, he did not review the working papers of the secondary auditor.
5. THAT, the said Paul Gupta, in or about the period December 1998 to March 1999, while he was engaged to perform a review of the financial statements of Valroop Canada Inc. o/a Marlin Travel for the year ended December 31, 1998, failed to perform his professional services in accordance with the standards of practice of the profession, including the recommendations set out in the *CICA Handbook*, contrary to Rule 206 of the rules of professional conduct, in that;
- (a) he did not adequately plan and properly execute the engagement;
 - (b) he did not employ sufficient enquiry, analytical procedures and discussion to allow him to assess whether the information being reported on was plausible in the circumstances;
 - (c) he did not document matters that are important to support the content of his report;
 - (d) he did not ensure there was a cash flow statement; and
 - (e) he failed to determine whether the interest expense arose from related party transactions and therefore did not make the appropriate disclosure in the financial statements.

6. Mr. Gupta entered a plea of guilty to charge No. 1 with respect to particular (b), and to charges Nos. 3, 4 and 5 with respect to each of the particulars alleged. He confirmed for the record that he understood that on the basis of his plea of guilty and on that basis alone, the discipline committee could find him guilty of the four charges. Mr. Gupta entered a plea of not guilty to charge No. 2.

7. Prior to commencing the case for the professional conduct committee, Mr. Bellmore withdrew particular (a) of charge No. 1. After outlining the case for the professional conduct committee, Mr. Bellmore filed an agreed statement of facts [Exhibit 4] and a three volume document brief [Exhibits 5A, 5B and 5C]. The agreed statement of facts related to charges Nos. 1, 3, 4 and 5. Mr. Bellmore called Mr. Cashion to give evidence with respect to charge No. 2. Mr. Bowman called Mr. Gupta who gave evidence with respect to charge No. 2.

DECISION ON THE CHARGES

Charge No. 1 [Rule 201.1]

8. Mr. Gupta's failure to comply with the order of the discipline committee made on March 30, 1998 was not a failure to precisely follow a technical term of the order. Mr. Gupta failed to comply with a fundamental provision of the order. He undertook three audit engagements which required the review and approval of his practice supervisor, but did not consult the supervisor at all with respect to any of the three audits.

9. The reasons of the discipline committee for its decision of March 30, 1998 included a paragraph which reads:

Supervised Practice

The panel noted that it may take Mr. Gupta some time to complete the courses prescribed. As no suspension was ordered, Mr. Gupta may continue to practise during the time that he is taking the required courses. The panel felt that Mr. Gupta required assistance in the planning and development of an audit plan that would meet the Institute's generally accepted auditing standards. In addition, the panel felt compelled to ensure that the public receives services that meet professional standards. As a result, the panel ordered the supervision of Mr. Gupta's practice for a specified period of time.

10. The discipline committee's order of March 30, 1998 set out the minimum responsibilities of the supervisor. Paragraphs 4(a), (b) and (c) of the order read:

4. THAT Mr. Gupta be and he is hereby required to complete a period of supervised practice, at his own cost, upon the following terms and conditions:

- (a) Within thirty (30) days from the date this Decision and Order becomes final under the bylaws, Mr. Gupta shall file with the secretary of the discipline committee a supervised practice plan, which shall set out the name and detailed responsibilities of the supervisor.
- (b) The responsibilities of the supervisor shall include, at a minimum, that the supervisor is to review and approve
 - (i) a client acceptance review, detailed audit planning memorandum, and budget, prior to the commencement of an audit; and
 - (ii) the audit working papers and financial statements prior to Mr. Gupta's issuance of an audit opinion;and written evidence of such review and approval shall be kept in Mr. Gupta's file.
- (c) The period of supervised practice shall run from the date this Decision and Order becomes final under the bylaws until September 1, 1999 and shall apply to all audit engagements having year ends that fall within the period.

11. Mr. Gupta did file a supervised practice plan with the secretary of the discipline committee in a letter dated October 26, 1998 [Exhibit 5A, page 27] in which, among other things, he said:

I have retained the services of Ian Gunn, an audit partner, from PricewaterhouseCoopers in London to do a second partner review on all my audit files as discussed at the hearing. He has already looked at my two native audits and given us review notes on these files.

The responsibilities of Mr. Boswell are to review and approve all audits up until Sept. 1, 1999. Mr. Boswell will also review a client acceptance review, detailed audit planning memorandum, and budget prior to the commencement of the audits and review and approve the audit working papers and financial statements prior to my issuing an audit opinion.

Mr. Gunn will be doing a final review on all audit engagements for the same period of time. He will be doing the equivalent of a second partner review on all audit files in question and has already started this with two of the native audits.

12. The agreed statement of facts and document brief make it clear that prior to the discipline committee's decision in March 1998, Mr. Gupta had made arrangements with Mr. Ian Gunn, CA, to provide accounting advice in the form of an additional partner review of Mr. Gupta's audit work. Mr. Gunn's letter to the Institute dated March 25, 1998 is found at Exhibit 5A, pages 3 and 4.

13. There is also a letter from Mr. Lee Boswell [Exhibit 5A, page 1], a chartered accountant of some four and one-half years' experience who was then practising at Ernst & Young, which sets out that he had agreed to provide a second partner review of all audit engagements for Mr. Gupta. In fact, Mr. Boswell did not perform the services on behalf of Ernst & Young as he had left that firm, and he did not perform a second partner review function, but instead, according to Mr. Gupta, did substantially all of the work on the audits. The work was not exemplary. Mr. Gupta testified that in hindsight he should have realized that Mr. Boswell could not do a second partner review of his own work, and that it had been a mistake not to send the files to Mr. Gunn for a "quick peek".

14. The agreed statement of facts, paragraph 18 reads:

Mr. Gupta acknowledges that the prior order and supervised practice plan required that every audit working paper file and financial statements be sent to Mr. Gunn for his review and approval prior to issuance of an audit opinion. This was not done and hence Mr. Gupta pleads guilty to Charge 1(b).

15. Mr. Gupta was found guilty of the charge.

Charges Nos. 3, 4 and 5 [Rule 206]

16. The charges themselves, the agreed statement of facts, and the document brief all disclosed that Mr. Gupta's failure to uphold the technical standards of the profession was not an isolated incident with respect to one client. His standard of practice fell far below the required standard and he was found guilty of these three charges.

Charge No. 2 [Rule 205]

17. With respect to charge No. 2, we found on the evidence presented that, with respect to the financial statements for the year ending March 31, 1998 for the Kashechewan First Nation [hereinafter referred to as KFN], Mr. Gupta associated himself with four different sets of financial statements, two of them dated May 31, 1998, one dated June 30, 1998, and one dated both October 7 and October 14, 1998.

18. The first page of each set of financial statements reads:

KASHECHEWAN FIRST NATION
MARCH 31, 1998
AUDITOR'S REPORT AND
CONSOLIDATED FINANCIAL STATEMENTS

In fact only one set of financial statements, those dated October 7 and October 14, 1998, were truly consolidated. These statements included the educational authority which had been audited by KPMG, as well as the band and welfare programs. Mr. Gupta acknowledged that he knew the financial statements for the band and the welfare programs, which he audited, were not consolidated. Thus, three of the sets of financial statements were, to Mr. Gupta's knowledge, false and misleading in that they were not truly consolidated but his auditor's report says they were.

19. The four sets of financial statements varied significantly with respect to the revenues, expenses, assets, liabilities, and surplus or deficit for the end of the year. Even the two sets of financial statements dated May 31, 1998, differed significantly as the revenues and expenses differ by several million dollars, and one statement has a substantial deficit while the other has an even more substantial surplus.

20. It was Mr. Gupta's position that the statements dated May 31, 1998 were accurate with the information he had at that time, but that with more and better information they later evolved. The cover page of one of the reports dated May 31, 1998 [Exhibit 5B, Tab 2] had a handwritten note "DRAFT ISSUED MAY 31/98". There was no other indication that these or any other statements were draft statements. Mr. Gupta said the correct or final statements were dated June 30, 1998. He explained that the earlier statement had been sent to assist the client in dealing with the funding agency, Indian and Northern Affairs Canada [INAC], and that the failure to withdraw the prior statement when a subsequent evolution appeared was an oversight or the unfortunate result of a lack of control at his office.

21. The truly consolidated financial statements which INAC received, dated October 7 and October 14, 1998 [Exhibit 5B, Tab 6] had Mr. Gupta's signed auditor's report attached. It was Mr. Gupta's position that he could neither confirm nor deny that these consolidated financial statements had been sent by his office. He testified that while he had lost control of what was leaving his office he was pretty sure he had not issued an audit report with the truly consolidated financial statements. However, the evidence shows that these financial statements with his audit report attached were sent by a fax machine at Mr. Gupta's office to INAC on October 15, 1998.

22. There is no evidence that Mr. Gupta conferred with KPMG. There is no note to the financial statements to which he attached his audit report dated October 7 and October 14, 1998 that KPMG had audited the educational authority. Moreover, the accurate financial information set out in the financial statements Mr. Gupta signed on June 30, 1998, combined with a KPMG audited financial information of the educational authority, would be substantially different than the financial statements which are attached to the audit report of October 7 and October 14, 1998. Accordingly, Mr. Gupta knew or should have known that the final financial statements which he sent to INAC, the funding agency, were false and misleading.

23. The four sets of financial statements were false and misleading in many respects, and Mr. Gupta was found guilty of charge No. 2.

SANCTION

24. Counsel for the professional conduct committee did not call evidence with respect to sanction. Mr. Bowman called Mr. Gupta, his father and his sister, who gave evidence on the issue. In addition, Mr. Bowman reviewed with Mr. Gupta and filed letters of reference from clients, friends and members of organizations he has served as a volunteer.

25. Mr. Bellmore outlined the terms of the order which the professional conduct committee had instructed him to request, namely: a reprimand; a fine of \$7,500; expulsion; and notice to the Public Accountants Council and the CICA, and by way of publication in *CheckMark*, *The Globe and Mail*, and the *Oakville Beaver*.

26. Mr. Bellmore submitted that Mr. Gupta had shown in his response to the order of March 30, 1998, which was intended to facilitate his rehabilitation, that a further order of this nature was not appropriate. He further submitted that Mr. Gupta had shown he was ungovernable.

27. Mr. Bowman submitted that the appropriate order would include a reprimand, a fine of less than \$7,500, and a practice restriction order made pursuant to Bylaw 530(3)(j) precluding Mr. Gupta from accepting audit or review engagements for a period of two years. He submitted that an order expelling Mr. Gupta was outside the appropriate range of sanctions in this case, and that a suspension was neither required nor warranted.

28. During his evidence with respect to sanction, Mr. Gupta filed a written undertaking dated September 8, 2000 addressed to the Institute, which reads:

I, Paul Gupta, CA recognize that I am deficient in audit and review engagement skills and in financial statement presentation for such engagements. I Paul Gupta, CA hereby UNDERTAKE that I shall not accept or perform any further review or audit engagements and shall not issue any further review or audit reports.

I, Paul Gupta, CA further UNDERTAKE that I will provide the Institute of Chartered Accountants of Ontario with 60 days notice of my intention to accept a review or audit engagement, although at this time I have no intention to accept such engagements in the future and have not performed any such engagements since approximately mid 1999. The above referred to notice shall be provided by registered mail to the Institute of Chartered Accountants of Ontario at 69 Bloor Street East, Toronto, Ontario, M4W 1B3, Attention: Chair, Professional Conduct Committee.

29. Mr. Bowman submitted that an order restricting Mr. Gupta's practice was appropriate, as Mr. Gupta's misconduct was essentially a failure to understand and follow technical standards with respect to audits. We do not think this is accurate. The first charge was laid under Rule 201.1, and the second charge was laid under Rule 205. Mr. Gupta's misconduct in both instances is more serious than a failure to adhere to technical standards, which is a matter of competence. Mr. Gupta's failure to comply with an order of the discipline committee and his own supervised practice plan, and his association with statements which he knew or ought to have known were false and misleading, are breaches of the ethical standards of the profession and require this panel of the discipline committee to consider whether or not Mr. Gupta is willing to be governed by the Institute. His now acknowledged lack of competence to perform audit or review engagements shows that he was not rehabilitated after 1998.

30. The general principles which govern the imposition of sanction require the discipline committee to consider general deterrence, specific deterrence and rehabilitation. In this case, the panel concluded that the principles of general and specific deterrence required Mr. Gupta's expulsion.

31. Rehabilitation is the general principle which often, if not always, takes priority when dealing with a younger member of the profession whose misconduct is a failure to adhere to the technical standards of the profession. The discipline committee is inclined to make orders which are rehabilitative in nature with a view to ensuring that the member will practise within the discipline and standards of the profession, thus strengthening the member's practice as well as the profession, and in turn serving the public interest. The order made in March 1998, when Mr. Gupta had been a member six years, was such an order. But orders primarily directed at a member's rehabilitation are only possible if the discipline committee is satisfied that the member is governable, and is both willing to be and capable of being rehabilitated.

32. In this case, with some reluctance but without serious hesitation, we concluded that Mr. Gupta has shown that he is not governable and that he is unwilling or unable to be rehabilitated. Earlier in these reasons we set out some of the evidence for finding him guilty of the five charges. With respect to the imposition of sanction, that evidence, including his failure to comply with the March 1998 order, must be seen in light of the fact that he knew he would be reinvestigated. He did not do what he was ordered to do and agreed to do even when he knew he would be reinvestigated. We heard no evidence that persuaded us that he would now comply with another order or his own undertaking.

33. This panel is well aware that a member giving evidence should not be held to a standard of perfection. The member is under considerable pressure and it is easy for the tongue to slip or for a question to be misunderstood. But we concluded that Mr. Gupta did not understand the essential nature of the order of March 30, 1998, his obligations generally as a chartered accountant, or his obligations specifically with respect to the standard of practice required of a member, in the months following March 1998, and still did not understand his obligations or the standards in May 2001. We cite four examples:

- (a) On more than one occasion Mr. Gupta said that in hindsight he should have sent the working papers or the financial statements to Mr. Gunn for a "quick peek." We do not think this was a slip of the tongue but an indication of his failure to understand what a second partner review is and what the order for supervised practice required. In this regard we note that the one time he did consult Mr. Gunn he did not deal with and resolve the points Mr. Gunn raised. While the KFN audit did not fall within the period of supervised practice, Mr. Gupta told the discipline committee in his letter to the secretary of October 26, 1998 [the supervised practice plan], that Mr. Gunn was doing a second partner review of the KFN audit and that he had already sent information to Mr. Gunn. As Mr. Gunn's letter of June 15, 1999 [Exhibit 5A, pages 41 and 42] makes clear, Mr. Gupta did not deal appropriately with the concerns Mr. Gunn raised, or obtain Mr. Gunn's clearance prior to the release of the financial statements.

- (b) Mr. Gupta said on more than one occasion that in the months following the discipline committee hearing in March 1998 he lost control of what was leaving his office. Even with his facsimile number on the audit report and financial statements in evidence [Exhibit 5B, Tab 6], he testified that he did not think he had sent those financial statements to INAC.
- (c) With respect to those same financial statements [ie. Exhibit 5B, Tab 6], Mr. Gupta questioned what would be wrong with his client combining the financial statements he had audited with KPMG's financial statements and attaching his audit report, provided the numbers were correct. Apparently he did not understand that the point of an audit report was to attest to the accuracy of the financial statements attached and not leave it to others, or to chance, to get the numbers right. Further, it should have been clear to Mr. Gupta when he gave evidence [see paragraph 22 above] that the numbers were not correct.
- (d) When asked by the chair of the panel why there were two dates on his audit report of October 7 and October 14, 1998, Mr. Gupta replied that based on what little he knew about auditing there must have been a significant event occur between those two dates. He did not suggest what the event was or that he knew there should only be one date on the report, and it was not clear he realized that he was responsible for the report.

34. As we concluded Mr. Gupta was not governable, an order under Bylaw 530(3)(j) is not appropriate. In addition, there are practical difficulties with the suggestion. If the order were to preclude Mr. Gupta from accepting audit or review engagements for a period of two years, or until after he had given sixty days' notice of his intention to again accept such engagements, as stipulated in his undertaking, the order would defer to another day the issue of whether or not Mr. Gupta was competent to perform audits or reviews, when presently he is not, and thus assume that Mr. Gupta could be rehabilitated which we do not think is the case.

35. We concluded that Mr. Gupta needs to be specifically deterred from holding himself out as a chartered accountant, and the appropriate order is an order of expulsion. The only way to protect the public from thinking Mr. Gupta is a competent chartered accountant is to preclude him from calling himself a chartered accountant.

36. We also concluded that as a matter of general deterrence Mr. Gupta should be expelled. The discipline process itself is expected to be rehabilitative. A member who has been investigated and charged by the professional conduct committee, and who appears before and is found guilty by the discipline committee, should fully understand the importance of complying with the resulting order made by the discipline committee. This is particularly so when an order is made for the protection of the public. Accordingly, any member coming before the discipline committee charged with failing to comply with a previous order of the discipline committee should understand that it is unlikely the second discipline panel is going to make another order predicated upon the member's willingness to comply with it.

37. The imposition of sanction is governed by the three general principles referred to above. While no two cases are similar, it is important to review the misconduct in a particular case before the discipline committee, and the circumstances of the particular member, with the misconduct and circumstances of other members who have been before the discipline committee, to ensure the sanctions imposed are reasonably consistent.

38. Mr. Bowman referred us specifically to the cases of Mr. Altberg and Mr. Bull. We do not find those cases helpful. Mr. Altberg was not before the discipline committee on a charge similar to the charges against Mr. Gupta, and he had not failed to comply with a previous order of the discipline committee intended to protect the public. Mr. Bull's case is virtually unique, and the order of the discipline committee in that case provided for Mr. Bull's consequential expulsion in the event, as proved to be the case, he continued to refuse to be governed by the Institute. The circumstances in this case are significantly different, and Mr. Gupta has already shown that he would not be governed by the discipline or standards of the Institute following the hearing in 1998.

Costs

39. In January 2001 the *Chartered Accountants Act* was amended, as a result of which the bylaws now provide that a member can be charged the costs of a hearing. Mr. Bellmore asked for costs but did not provide a breakdown with respect to those costs, and the discipline committee did not think it appropriate to order costs without a full presentation by the professional conduct committee as to what costs it considered appropriate.

40. The written decision and order of the committee which was sent to Mr. Gupta on May 31, 2001 reads as follows:

DECISION

THAT, having seen, heard and considered the evidence, including the agreed statement of facts, filed, particular (a) of charge No. 1 having been withdrawn, and having heard the plea of guilty to charges Nos. 1 as amended, 3, 4 and 5, the Discipline Committee finds Prem Paul Gupta guilty of charges Nos. 1 as amended, 2, 3, 4 and 5.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Gupta be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Gupta be and he is hereby fined the sum of \$7,500, 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. Gupta be and he is hereby expelled from membership in the Institute.

4. THAT notice of this Decision and Order, disclosing Mr. Gupta'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* and the *Oakville Beaver*.
5. THAT Mr. Gupta 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.

APPREHENSION OF BIAS

41. As set out at the beginning of these reasons, the panel reconvened on May 31, 2001 to hear the member's submissions as to why he should not be immediately suspended pursuant to Bylaw 583. Before making his submissions on this issue, however, Mr. Bowman raised another matter.

42. Mr. Bowman had sent a letter on May 30 [Exhibit 11] to Mr. Bellmore, with copies to the discipline committee counsel and secretary, wherein he raised a concern about the composition of the panel.

43. He explained at the commencement of the proceeding on May 31 that it was during the cross-examination of Mr. Gupta that it was realized that one of the members of the panel, E. A. Archibald, CA, had been a member of the panel which heard Mr. Gupta's case in March 1998. It was Mr. Bowman's position that this raised an apprehension of bias, and that while this argument was essentially one for another day, he wanted the panel to be aware of the concern before proceeding on May 31. After some discussion, Mr. Bowman acknowledged he was formally bringing a motion asking the panel not to proceed on account of an apprehension of bias.

44. Mr. Bellmore took the position that in not raising the concern when he first knew about it, Mr. Bowman had waited too long and could not raise the concern now.

45. When asked what bias would attach to Ms. Archibald which would not attach to any other member of the discipline committee, whether they had been a member of the panel in March 1998 or not, counsel for Mr. Gupta replied that only the members of the 1998 panel would know of the deliberations that went on at that hearing, and that the reference by counsel for the professional conduct committee to the discipline committee having "given Mr. Gupta a break" in March 1998 was a cause for particular concern. He also said that he thought Ms. Archibald's participation in this hearing contravened Bylaw 579.

46. After deliberating, we concluded that we would proceed and that Ms. Archibald would remain a member of the panel for dealing with the application to be brought by the member under Bylaw 583.

47. The members of this panel were introduced at the beginning of the hearing and our names were on the nameplates in front of us, clearly visible to the parties from the commencement of the proceedings. Mr. Gupta and his counsel had the document brief prior to the hearing, and Ms. Archibald's name is on the reasons for the decision of March 30, 1998, contained in the document brief.

48. We think the objection should have been raised at the beginning of these proceedings. We concluded that the failure to do so then, and certainly the failure to do so after the cross-examination of Mr. Gupta, when the concern was discovered, precludes the objection from being raised after the decision has been rendered. With respect to the issue under Bylaw 583, the bylaw gives the panel making the order of expulsion, not another panel, a discretion to decide that immediate suspension is not needed.

49. We understand that the objection raised by Mr. Bowman is on account of an apprehension of bias and not actual bias. The members of this panel want it noted in these reasons that we were all aware that Ms. Archibald had been a member of the panel in March 1998, and that we found no evidence or suggestion of bias on her part in these proceedings or in our deliberations. The public representative, who is sensitive to such issues, particularly wants it noted in our reasons that he found no suggestion of prejudice on behalf of Ms. Archibald. Ms. Archibald herself would not have agreed to participate as a member of this panel if she thought she had particular prior knowledge which would prejudice her towards the member.

50. Further, at the hearing in March 1998, the member entered a plea of guilty, did not testify, no adverse inferences were drawn against him other than those which he acknowledged to be true, and there was, in effect, an order the member consented to. We do not know what reasonable concern arises with respect to how a member of that panel would approach this hearing any differently than any other member of the discipline committee.

51. We do not think Bylaw 579 was breached. We recognize Mr. Bellmore made a submission to the effect that Mr. Gupta was "given a break" in 1998, but the reasons and the order of March 30, 1998 speak for themselves. Also, if Mr. Gupta was "given a break" in March 1998, as Mr. Bellmore suggested, that was not relevant to the issue of sanction. The issue was what he did in light of the order which was actually made.

APPLICATION UNDER BYLAW 583

52. Bylaw 583, which came into effect in June 2000, reads as follows:

583 Suspension of membership when expulsion ordered

When a panel of the discipline committee orders that a member be expelled, the member's rights and privileges of membership shall be and remain suspended from the time the order of expulsion is pronounced until the order becomes final or is set aside by the appeal committee, unless the panel of the discipline committee making the order of expulsion determines that in the circumstances of the case a suspension is not required for the protection of the public or in the public interest.

53. Mr. Bowman, on behalf of Mr. Gupta, asked this panel to determine that in the circumstances of this case a suspension is not required for the protection for the public or in the public interest. In particular he submitted that:

- the bylaw was designed to catch members being expelled for reasons of moral turpitude who thus should not be permitted to carry on as chartered accountants;
- the circumstances now, one and one-half years after the reinvestigation in November 1999, and some three years after the decision in March 1998 when no suspension was imposed, were not different than the circumstances prior to March 1998 or November 1999 except in one respect, there had been a determination of guilt;
- Mr. Gupta was not a danger to the public, and the inconvenience of a suspension to his client would approach something which could be described as irreparable harm and would interfere with his community activities which are in the public interest;
- Mr. Gupta may have been found to be ungovernable but that does not affect the public or the public interest; and
- the test to be applied should be analogous to the test the courts apply when granting an interim injunction, namely, that where as here there are serious issues to be dealt with on appeal, and there is no irreparable harm to the Institute if Mr. Gupta continues to practice as a CA, the balance of convenience, particularly to Mr. Gupta's clients, suggests that he should be allowed to continue to practise as a chartered accountant.

54. On behalf of the professional conduct committee, Mr. Bellmore submitted that there was no reason to set aside the suspension. In particular, he submitted that:

- the test is set out in the bylaw – whether in the circumstances of the case a suspension is not required for the protection of the public or in the public interest – and is not analogous to the test the courts use when granting an injunction;
- while the reasons were not yet available, Mr. Gupta must have been found by this panel to be ungovernable;
- Mr. Gupta had not been rehabilitated; and
- Mr. Gupta had clients because he was a chartered accountant and advertised himself as such, and it was only fair to those clients that they know his governing body did not think he should be a chartered accountant.

55. In his reply, Mr. Bowman said that Bylaw 583 was irrelevant as the public was not affected by issues of governability between the member and the Institute. Mr. Bowman emphasized that there was no evidence that Mr. Gupta was not a competent tax practitioner.

56. We do not agree that the issue of governability does not affect the public or the public interest. We do not think this is essentially a standards case. Further, while there was no evidence that Mr. Gupta was or was not a competent tax practitioner, there was ample evidence that Mr. Gupta was not a competent chartered accountant, and evidence that he is ungovernable.

57. For the reasons set out above, and in particular the need to specifically deter Mr. Gupta from holding himself out as a chartered accountant, we concluded that immediate suspension pursuant to Bylaw 583 was in the public interest and would afford a measure of protection to the public.

DATED AT TORONTO THIS 18TH DAY OF JULY, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

D. P. SETTERINGTON, FCA - CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

E.R. ARCHIBALD, CA
B.L. HAYES, CA
R.D. WHEELER, FCA
B.A. YOUNG (Public representative)

APPEAL COMMITTEE re Prem Paul Gupta

An appeal by **PREM PAUL GUPTA**, a suspended member of the Institute, of the Decision and Order of the Discipline Committee made on May 24, 2001 pursuant to the bylaws of the Institute, as amended.

ORDER MADE DECEMBER 13, 2001

HAVING heard and considered the submissions made on behalf of Prem Paul Gupta, and on behalf of the professional conduct committee, upon Mr. Gupta's appeal of the Decision and Order of the Discipline Committee made on May 24, 2001, the Appeal Committee orders:

1. THAT Mr. Gupta's appeal be and it is hereby dismissed.
2. THAT the Decision and Order of the Discipline Committee be and it is hereby confirmed in its entirety.
3. THAT the Decision and Order of the Discipline Committee becomes final, binding and conclusive pursuant to the bylaws effective December 13, 2001, and that Mr. Gupta's expulsion and all time periods stipulated in the Order begin December 13, 2001.

DATED AT TORONTO THIS 18TH DAY OF DECEMBER, 2001
BY ORDER OF THE APPEAL COMMITTEE

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

APPEAL COMMITTEE re Prem Paul Gupta

An appeal by **PREM PAUL GUPTA**, a suspended member of the Institute, of the Decision and Order of the Discipline Committee made on May 24, 2001 pursuant to the bylaws of the Institute, as amended.

REASONS FOR THE ORDER MADE DECEMBER 13, 2001

This appeal was heard by a panel of the appeal committee of the Institute of Chartered Accountants of Ontario on December 13, 2001. Mr. Paul Farley appeared on behalf of the professional conduct committee, and Mr. Bryan McPhadden appeared for Mr. Gupta, who was appealing the order of the discipline committee made against him on May 24, 2001.

THE DISCIPLINE COMMITTEE'S DECISION AND ORDER

The professional conduct committee had laid five charges of professional misconduct against Mr. Gupta pursuant to Rules 201.1, 205 and 206 of the rules of professional conduct. Mr. Gupta pleaded not guilty to charge No. 2, and guilty to charges Nos. 1(b), 3, 4 and 5. Particular (a) of charge No. 1 was withdrawn by the professional conduct committee. At its hearing held on May 23 and 24, 2001, the discipline committee found Mr. Gupta guilty of all charges, and made the following order:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Gupta be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Gupta be and he is hereby fined the sum of \$7,500, 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. Gupta be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Gupta'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* and the *Oakville Beaver*.
5. THAT Mr. Gupta 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.

RELIEF SOUGHT FROM THE APPEAL COMMITTEE

Mr. Gupta's Notice of Appeal sought the following relief from the appeal committee:

- that the expulsion order be set aside, and that a lengthy period of suspension be substituted therefor; and

- that the order for publication of notice in the *Oakville Beaver* be set aside.

THE APPEAL COMMITTEE'S ORDER

After reviewing the documents filed, and hearing the submissions of both counsel, the appeal committee made the following order:

1. THAT Mr. Gupta's appeal be and it is hereby dismissed.
2. THAT the Decision and Order of the Discipline Committee be and it is hereby confirmed in its entirety.
3. THAT the Decision and Order of the Discipline Committee becomes final, binding and conclusive pursuant to the bylaws effective December 13, 2001, and that Mr. Gupta's expulsion and all time periods stipulated in the Order begin December 13, 2001.

These are the reasons for the appeal committee's order.

MEMBER'S GROUNDS FOR APPEAL

Mr. McPhadden submitted that, in the circumstances of this case, the order that Mr. Gupta be expelled is grossly excessive, particularly given previous decisions in similar or worse situations. There was no evidence, he submitted, that Mr. Gupta participated in a scheme intended by his client to misrepresent the client's financial information. There was no evidence that a third party was detrimentally affected by the financial information with which Mr. Gupta associated himself. There was no suggestion, let alone evidence, of moral turpitude on the part of Mr. Gupta relative to the financial information with which he associated himself.

It was submitted that all of Mr. Gupta's difficulties stemmed from audit and review engagements, which form a very small percentage of his practice, and that the rest of Mr. Gupta's accounting practice consists mostly of personal and corporate tax returns.

Mr. Gupta offered an undertaking to the Institute dated September 8, 2000 not to accept any further audit or review engagements, which was filed as an exhibit at the discipline hearing. Mr. McPhadden submitted that as this undertaking accords with Bylaw 530(3)(j)(i), it was open to the discipline committee to either accept the undertaking offered by Mr. Gupta, or impose such restrictions as it saw fit, rather than ordering the member's expulsion. Bylaw 530(3)(j)(i) provides that the discipline committee, upon finding a member guilty of a charge, may order:

- (j) that the practice of public accounting by any such member be restricted for a specified period of time by
 - (i) restricting the type of current or future professional engagements that can be performed by the member;

Mr. McPhadden submitted that Mr. Gupta is quite capable of being rehabilitated. As the only complaints about Mr. Gupta's conduct relate to audit and review engagements, and as Mr. Gupta has offered an undertaking not to perform such engagements, he submitted that Mr. Gupta is not in need of rehabilitation unless and until he wants to again take such engagements.

With respect to publication, Mr. McPhadden submitted that in the event the appeal committee does not set aside his client's expulsion from membership, Mr. Gupta does not take exception to the discipline committee's order for publication in *The Globe and Mail*, but seeks an order setting aside publication in the *Oakville Beaver*. Regardless of whether the appeal committee decides to grant some or all of the relief sought on this appeal, he submitted, the appellant will still be at liberty to practise accounting, though in the event none of the relief sought is granted, he conceded, the appellant will be precluded from using the CA designation and from holding himself out as a chartered accountant. Mr. McPhadden stated that Mr. Gupta will be able to continue his current tax accounting practice, but that publication in the local newspaper will harm that practice.

The discipline committee did not make specific findings relating to the need for publication in the *Oakville Beaver*, although it did find "that Mr. Gupta needs to be specifically deterred from holding himself out as a chartered accountant." It was submitted by Mr. McPhadden that publication in *The Globe and Mail* alone is adequate for the purpose of deterring the appellant from holding himself out as a chartered accountant, and that the potential harm to Mr. Gupta's tax accounting practice and his ability to make a living is greater than any perceived need for publication of the decision and order in the *Oakville Beaver*.

RESPONDENT'S POSITION

Mr. Farley indicated that on March 30, 1998 Mr. Gupta was found guilty by the discipline committee of five charges contrary to Rule 206 of the rules of professional conduct. As part of the sanctions order, Mr. Gupta was required to complete a period of supervised practice, and to file a supervised practice plan with the discipline committee, setting out the name and detailed responsibilities of the supervisor. It was part of the order that at a minimum the supervisor was to review and approve:

- a client acceptance review, detailed audit planning memorandum, and budget, prior to the commencement of an audit; and
- the audit working papers and financial statements prior to Mr. Gupta's issuance of an audit opinion.

It was a further requirement that written evidence of such review and approval was to be kept in Mr. Gupta's file.

The period of supervised practice was from September 23, 1998 to September 1, 1999, and applied to all audit engagements having year ends falling within that period. It was a further provision of the discipline committee's order that Mr. Gupta be reinvestigated by the professional conduct committee on or about September 1, 1999.

Upon Mr. Gupta's reinvestigation, the professional conduct committee investigator selected two audit engagement files and one review engagement file for review, and found standards deficiencies in all of them. These deficiencies are set out in the particulars to charges Nos. 3, 4 and 5 dated December 12, 2000, of which Mr. Gupta was found guilty by the discipline committee, and at pages 6 through 16 of the agreed statement of facts filed at the discipline hearing.

Mr. Farley pointed out that Mr. Gupta was also found guilty by the discipline committee of failing to maintain the good reputation of the profession and its ability to serve the public interest, as a result of his failure to comply with the discipline committee's previous order of March 30, 1998. Mr. Gupta breached the 1998 order by failing to have his practice supervisor appointed pursuant to the order review and approve his audit working papers and financial statements prior to his issuance of an audit opinion. The discipline committee in the case under appeal found that, contrary to the supervisory plan submitted by Mr. Gupta to the Institute, Mr. Gupta did not perform audit work under supervision but instead had another person do the actual audit work, after which Mr. Gupta simply signed the audit opinion. Neither the working papers nor draft financial statements were sent to the practice supervisor for review prior to the issuance of the financial statements and auditor's report.

Counsel for the professional conduct committee submitted that Mr. Gupta's failure to comply with the order of the discipline committee made on March 30, 1998 was not merely a failure to precisely follow a technical term of the order, as had been argued on behalf of the member by his counsel at the discipline hearing as well as by Mr. McPhadden upon this appeal. Mr. Gupta undertook audit engagements which required the review and approval of his practice supervisor, and did not consult the supervisor at all with respect to those audits.

Mr. Gupta pleaded not guilty but was found guilty of signing or associating himself with financial statements which he knew or should have known were false or misleading. As Mr. Farley pointed out, the discipline committee found with respect to an audit of a client's financial statements for the year ending March 31, 1998 that Mr. Gupta associated himself with four different sets of financial statements, two of them dated May 31, 1998, one dated June 30, 1998, and one dated both October 7 and October 14, 1998. In summarizing the evidence and its findings with respect to this charge, the discipline committee found that the four sets of financial statements were false and misleading in many respects.

With respect to publication, Mr. Farley submitted that the discipline committee has discretion under the bylaws to determine the form and manner of publication of its decisions and orders, and that the publication order imposed in this case was not unreasonable on the facts before it. He stated that at the hearing before the discipline committee, counsel for the professional conduct committee clearly indicated his recommendation that publication be made in both *The Globe and Mail* and the *Oakville Beaver*, and counsel for Mr. Gupta did not suggest that publication in the *Oakville Beaver* was inappropriate.

It was submitted by counsel for the professional conduct committee that the publication ordered in this case is consistent with the overwhelming majority of decisions of the discipline and appeal committees in previous cases, and that it is only in the most rare and unusual of cases that the discipline committee will not order publication including the member's name.

Mr. Farley concluded by submitting that the issue before the appeal committee was whether the discipline committee, upon consideration of all the evidence before it, properly exercised its discretion and imposed a sanction within the appropriate range of sanctions given the facts of this particular case, and that unless an error in principle was made, or unless the sanction imposed was not within the appropriate range of sanctions consistent with earlier cases, the appeal committee should not disturb the penalty and substitute its judgment for that of the discipline committee.

PANEL'S DETERMINATION

The appeal panel agreed with Mr. Farley's submission that its role was to determine whether or not the discipline committee had properly exercised its discretion and imposed an appropriate sanction in the circumstances of the case before it. After hearing the submissions of counsel and reviewing the documentation before us, we concluded that no error had been made by the discipline committee in either exercising its discretion or imposing an appropriate sanction, and that there was no basis upon which to interfere with the order that it had made.

In considering the appropriate sanction, the discipline committee concluded that Mr. Gupta was ungovernable, and that "the principles of general and specific deterrence required Mr. Gupta's expulsion."

The discipline committee properly considered the principle of rehabilitation, but concluded that Mr. Gupta is unwilling or unable to be rehabilitated. The committee noted that the principle of rehabilitation is usually given precedence in matters involving younger members whose misconduct involves a failure to adhere to the technical standards of the profession, and characterized the previous disciplinary order of March 1998 as a rehabilitative order. It observed in its reasons, however, that "orders primarily directed at a member's rehabilitation are only possible if the discipline committee is satisfied that the member is governable, and is both willing to be and capable of being rehabilitated", and then stated: "we concluded that Mr. Gupta has shown that he is not governable and that he is unwilling or unable to be rehabilitated".

The discipline committee fully and fairly considered the member's offer to provide an undertaking to refrain from conducting audit or review engagements, but ultimately determined that such an undertaking was inappropriate in the circumstances of the case. By the terms of his supervised practice plan dated October 26, 1998 which he filed with the secretary of the discipline committee, Mr. Gupta in effect undertook not to conduct audits or reviews except under supervision. He failed to comply with the terms of this plan, thereby breaching a formal order of the discipline committee. It is clear from the reasons in the case under appeal that in light of this history the discipline committee was not prepared to attach any weight to an undertaking provided by this member.

In finding that Mr. Gupta was ungovernable, the discipline committee took into account his evidence both with respect to charge No. 2 and with respect to sanction. The committee concluded from this evidence that in the months following the order made against him in March 1998, Mr. Gupta did not understand the essential nature of the order, his obligations generally as a chartered accountant, or his obligations specifically with respect to the standard of practice required, and that he still did not understand his obligations or the standard at the time of his second hearing in May 2001. In concluding that expulsion was the appropriate sanction, the discipline committee carefully considered all of the evidence and applied that evidence to the principles that govern the imposition of sanction.

The appeal panel found the order of the discipline committee to have been well considered, and its reasons to be well articulated. Upon deliberation, we concluded that no error in principle had been made by the discipline committee, and that the sanctions imposed were within the appropriate range of sanctions consistent with earlier similar cases. As a result, Mr. Gupta's appeal was dismissed, and the discipline committee's order of May 24, 2000 was confirmed.

AWARDING OF COSTS

Mr. Farley submitted that the bylaws now permit the levy of costs against a disciplined member by the appeal committee, and referred the panel to Bylaws 530(3)(c) and 601(6). A schedule of estimated direct costs of the hearing was presented, which reflected total costs of approximately \$7,300. Mr. Farley then requested that the costs be assessed against Mr. Gupta in the amount of \$5,000.

Mr. McPhadden acknowledged the costs provisions contained in the bylaws, but pointed out that the awarding of costs was at the discretion of the appeal committee, and that there was little precedent for awarding such costs. He submitted that a policy of awarding costs against unsuccessful appellants could undermine fairness and natural justice by deterring members from pursuing meritorious appeals. He then argued that the findings made by the discipline committee against his client had not involved moral turpitude, and that his appeal was not frivolous or vexatious, but justifiable and properly brought.

After considering and deliberating upon the submissions of counsel, the panel concluded that it was not comfortable making a ruling on costs at this time without further study and understanding of the principles and parameters of levying costs. Accordingly, we decided not to assess costs against Mr. Gupta.

DATED AT TORONTO THIS 19TH FEBRUARY, 2002
BY ORDER OF THE APPEAL COMMITTEE

ERIC W. SLAVENS, FCA – DEPUTY CHAIR
THE APPEAL COMMITTEE

MEMBERS OF THE PANEL:

A.D. BOSSIN, CA
A.R. BYRNE, CA
M.A. PORTELANCE, CA
B.L. STEPHENS, CA
L.L. WORTHINGTON, FCA
B.W. BOWDEN (Public representative)