

Perry Michael Fryers: Summary, as Published in *CheckMark*

Perry Michael Fryers, of Willowdale, was found guilty of four charges under Rule 205 of signing or associating himself with statements, representations or financial statements which he knew were false or misleading, and one charge under Rule 213 of lending himself and/or his services to an unlawful activity. Mr. Fryers prepared income tax returns for his sister-in-law for three consecutive years knowing that the income was understated and the expenses were overstated. While employed as a trust company vice-president, he filed T4 Summaries of Remuneration Paid for three successive years which were false or misleading in that they did not include bonuses paid to him by his employer. He failed to include these bonuses on his income tax returns, and deducted on his returns professional fees that had been paid on his behalf by his employer. Mr. Fryers was fined \$10,000 and suspended for two years. His appeal was dismissed by the appeal committee.

CHARGE(S) LAID re Perry Fryers

The Professional Conduct Committee hereby makes the following charges against Perry Fryers, a member of the Institute:

1. THAT, the said Perry Fryers, in or about the period January 1, 1996 through to May 1, 1998, did knowingly lend himself and/or his services to an unlawful activity in that he prepared tax returns on behalf of Caryn Negin for the taxation years 1995, 1996 and 1997, believing Caryn Negin's income to be understated and her expenses to be overstated for each year, contrary to Rule 213 of the rules of professional conduct.
2. THAT, the said Perry Fryers, in or about April 1996, signed or associated himself with a statement, representation or financial statement, namely, his 1995 personal income tax return, which he knew to be false or misleading in that he did not include in income a bonus received from his employer during the 1995 taxation year in the approximate amount of \$7,500, and deducted as an expense professional fees which had been paid on his behalf by his employer, contrary to Rule 205 of the Rules of Professional Conduct.
3. THAT, the said Perry Fryers, in or about April 1997, signed or associated himself with a statement, representation or financial statement, namely, his 1996 personal income tax return, which he knew to be false or misleading in that he did not include in income a bonus received from his employer during the 1996 taxation year in the approximate amount of \$20,000, and deducted as an expense professional fees which had been paid on his behalf by his employer, contrary to Rule 205 of the Rules of Professional Conduct.
4. THAT, the said Perry Fryers, in or about April 1998, signed or associated himself with a statement, representation or financial statement, namely, his 1997 personal income tax return, which he knew to be false or misleading in that he did not include in income a bonus received from his employer during the 1997 taxation year in the approximate amount of \$30,000, and deducted as an expense professional fees which had been paid on his behalf by his employer, contrary to Rule 205 of the Rules of Professional Conduct.
5. THAT, the said Perry Fryers, in or about the period February 1, 1996 through February 28, 1998, while employed as Vice-President of The Equitable Trust Company, signed or associated himself with statements, representations or financial statements, namely, the "T4 Summary of Remuneration Paid" for each of the years 1995, 1996 and 1997, which he filed or caused to be filed with Revenue Canada knowing them to be false or misleading in that he did not include in the summaries bonuses paid to him by his employer in the approximate amount of \$7,500, \$20,000 and \$30,000 for the years 1995, 1996 and 1997 respectively, contrary to Rule 205 of the Rules of Professional Conduct.

Dated at Toronto this 3rd day of October 2000.
RICHARD JOHNSTON, FCA – DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Perry Fryers

DECISION AND ORDER IN THE MATTER OF: Charges against **PERRY FRYERS, CA**, a member of the Institute, under **Rules 205 and 213** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE FEBRUARY 14, 2001

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, 4 and 5, the Discipline Committee finds Perry Fryers guilty of charges Nos. 1, 2, 3, 4 and 5.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Fryers be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Fryers be and he is hereby fined the sum of \$10,000, to be remitted to the Institute within two (2) years from the date this Order is made.
3. THAT Mr. Fryers be and he is hereby suspended from the rights and privileges of membership in the Institute for a period of two (2) years from the date this Order is made.
4. THAT notice of this Decision and Order, disclosing Mr. Fryer's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
5. THAT Mr. Fryers surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Order is made, to be held during the period of suspension and thereafter returned to Mr. Fryers. In the event Mr. Fryers fails to surrender his certificate of membership within this ten day period, his suspension pursuant to paragraph 3 shall be extended one day for each day the certificate remains undelivered to the secretary.
6. THAT in the event Mr. Fryers fails to comply with any of the requirements of this Order, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified in paragraph 4 hereof, and in *The Globe and Mail*.

DATED AT TORONTO THIS 16TH DAY OF FEBRUARY, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Perry Fryers

IN THE MATTER OF: Charges against **PERRY FRYERS, CA**, a member of the Institute, under **Rules 205 and 213** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE FEBRUARY 14, 2001

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario convened on February 14, 2001 to hear charges of professional misconduct laid by the professional conduct committee against Mr. Perry Fryers.
2. The professional conduct committee was represented by Mr. Paul Farley. Mr. Fryers was present and represented by his counsel, Mr. Frank Bowman.
3. The hearing concluded on February 14, and the panel's decision and order was issued on February 16, 2001. These reasons, issued in writing pursuant to Bylaw 574, contain the panel's decision and order, and the charges laid by the professional conduct committee, as well as the reasons of the panel.

THE CHARGES AND THE PLEA

4. The professional conduct committee, on October 3, 2000, laid the following charges against Mr. Fryers:
 1. THAT, the said Perry Fryers, in or about the period January 1, 1996 through to May 1, 1998, did knowingly lend himself and/or his services to an unlawful activity in that he prepared tax returns on behalf of Caryn Negin for the taxation years 1995, 1996 and 1997, believing Caryn Negin's income to be understated and her expenses to be overstated for each year, contrary to Rule 213 of the rules of professional conduct.
 2. THAT, the said Perry Fryers, in or about April 1996, signed or associated himself with a statement, representation or financial statement, namely, his 1995 personal income tax return, which he knew to be false or misleading in that he did not include in income a bonus received from his employer during the 1995 taxation year in the approximate amount of \$7,500, and deducted as an expense professional fees which had been paid on his behalf by his employer, contrary to Rule 205 of the Rules of Professional Conduct.
 3. THAT, the said Perry Fryers, in or about April 1997, signed or associated himself with a statement, representation or financial statement, namely, his 1996 personal income tax return, which he knew to be false or misleading in that he did not include in income a bonus received from his employer during the 1996 taxation year in the approximate amount of \$20,000, and deducted as an expense professional fees which had been paid on his behalf by his employer, contrary to Rule 205 of the Rules of Professional Conduct.

4. THAT, the said Perry Fryers, in or about April 1998, signed or associated himself with a statement, representation or financial statement, namely, his 1997 personal income tax return, which he knew to be false or misleading in that he did not include in income a bonus received from his employer during the 1997 taxation year in the approximate amount of \$30,000, and deducted as an expense professional fees which had been paid on his behalf by his employer, contrary to Rule 205 of the Rules of Professional Conduct.
 5. THAT, the said Perry Fryers, in or about the period February 1, 1996 through February 28, 1998, while employed as Vice-President of The Equitable Trust Company, signed or associated himself with statements, representations or financial statements, namely, the "T4 Summary of Remuneration Paid" for each of the years 1995, 1996 and 1997, which he filed or caused to be filed with Revenue Canada knowing them to be false or misleading in that he did not include in the summaries bonuses paid to him by his employer in the approximate amount of \$7,500, \$20,000 and \$30,000 for the years 1995, 1996 and 1997 respectively, contrary to Rule 205 of the Rules of Professional Conduct.
5. Mr. Fryers entered a plea of guilty to each of the charges laid against him, and confirmed for the record that he understood that on the basis of his plea of guilty, and on that basis alone, he could be found guilty of the charges.

THE CASE FOR THE PROFESSIONAL CONDUCT COMMITTEE

6. In presenting the case for the professional conduct committee, Mr. Farley filed an agreed statement of facts and a document brief as exhibits. The hearing adjourned to allow the panel time to review the statement of facts and the document brief. When the hearing resumed, Mr. Farley briefly summarized the facts and made specific reference to some of the documents before concluding the case for the professional conduct committee.
7. Mr. Bowman did not call evidence or make submissions on behalf of Mr. Fryers with respect to the issue of guilt or innocence.

DECISION ON THE CHARGES

8. The panel deliberated and considered the evidence it had heard, and concluded that the charges had been proven and that Mr. Fryers was guilty of professional misconduct. When the parties returned to the hearing chamber, the chair advised them of the panel's decision, which was as follows:

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, 4 and 5, the Discipline Committee finds Perry Fryers guilty of charges Nos. 1, 2, 3, 4 and 5.

SANCTION

9. The hearing then proceeded to deal with the issue of sanction. Mr. Farley did not call evidence with respect to sanction. Mr. Bowman called two witnesses, Mr. Fryers and Mr. Geoffrey Bledin, CA, president of Mr. Fryers' employer, The Equitable Trust Company. Two letters of reference were entered into evidence on behalf of Mr. Fryers, one from Mr. James Slavens, CA, a partner of PricewaterhouseCoopers, and another from Mr. Eric Kirzner, a professor of finance at the University of Toronto's Rotman School of Management, and chair of the audit committee of Equitable Trust. Both attested to Mr. Fryers' integrity and professionalism.

10. Mr. Farley emphasized that Mr. Fryers was in a position of trust and violated that trust, not once, but three times over the course of three years, and did not acknowledge his wrongdoing or change his conduct until he was caught. Mr. Farley submitted that his misconduct was both personal and professional, personal in that he filed incomplete personal income tax returns, and professional in that he filed false T4 summaries as an officer of the company. Mr. Farley submitted that such misconduct discloses what the cases have referred to as "moral turpitude" of a kind and nature which requires that Mr. Fryers be expelled so that other members, who might be tempted to engage in similar conduct, will be deterred from doing so. He also requested a fine in the range of \$7,500 to \$10,000 as a general and specific deterrent.

11. Mr. Bowman submitted that the case properly understood did not require expulsion as a general deterrent to other members, or as a specific deterrent to Mr. Fryers. He submitted that given the circumstances of this case an order suspending Mr. Fryers was appropriate. He submitted that a fine was inappropriate on account of Mr. Fryers' strained financial circumstances.

12. In addition to expulsion and a fine, Mr. Farley requested a reprimand, notice to the Public Accountants Council and the Canadian Institute of Chartered Accountants, publication of notice in *CheckMark*, and, in the event of expulsion, publication in a newspaper. While counsel for Mr. Fryers did not welcome these requested provisions, he did not challenge them.

Determination of the Sanction

13. As in every case involving a determination of sanction, this panel of the discipline committee considered the three general principles which must be considered when a sanction is imposed, namely general deterrence, specific deterrence and rehabilitation. As is often the case, the determination of the appropriate sanction was the most difficult task of the hearing. More particularly, the issue in this case was whether or not the misconduct required expulsion as a general deterrent, or whether the public, the profession and the member would be better served by the imposition of a suspension and a substantial fine.

14. Expulsion is usually seen as the strongest general deterrent. Expulsion also specifically deters the person expelled from representing that he or she is a chartered accountant, so that the public, which assumes that a person with the designation "CA" adheres to the high standards of the profession, is not misled. Thus, generally cases involving dishonest conduct whereby a member misappropriates money for his or her own benefit result in expulsion, in the interests of the profession and the public.

15. An order which provides for rehabilitation is usually seen as being in the best interest of the member. But such orders are often in the interest of the public and the profession as well. The public interest is served when the person practises within the discipline, and in accordance with the standards of the profession. The profession is strengthened by the member's adherence to proper conduct. Thus there have been cases of misconduct involving moral turpitude which have resulted in a fine and a suspension rather than expulsion.

16. In cases where the panel deals with the issue of expulsion or a fine and suspension, it must compare the offence and the offender before it to other offenders and other offences. Each case differs. The misconduct itself and the circumstances of the members are inevitably different. While it is difficult for a panel of the discipline committee to explicitly set out in its reasons all of the factors which persuade it in a particular case involving moral turpitude to make the order it does, the cases do provide guidance. We reviewed the precedents which both counsel referred to, including the cases of *Lutvak*, *Locke*, *Haar*, *White*, *Pollock*, *Messina* and *Eckstein*.

17. We concluded that Mr. Fryers, who is a relatively young man, is not the worst kind of offender, and that he is both capable of rehabilitation and deserving of the opportunity.

18. This was Mr. Fryers' first offence. There is no doubt that members of the profession and the public, including his employer, regard Mr. Fryers as a man of honour and integrity, and regard the misconduct which has brought him before the discipline committee as an aberration. The support of his employer is particularly significant, because as a result of Mr. Fryers' misconduct his employer had to make a report to the Superintendent of Financial Institutions.

19. The explanation given for Mr. Fryers' misconduct was the demands of his wife for more money to support a family lifestyle to which she had become accustomed, a lifestyle more expensive than could be supported on Mr. Fryers' income.

20. Where the explanation for misconduct is the influence of a third party not represented at the hearing, the panel must necessarily be sceptical of the explanation. However, we accepted the explanation based on the information provided by counsel, Mr. Fryers' own testimony, and the testimony of Mr. Bledin.

21. While Mr. Fryers' misconduct was not limited to one isolated event, the misconduct was of one particular kind during a period of his life when he was under substantial pressure from his wife and his wife's family. His conduct was wrong, but his motivation was to preserve his family, which does not suggest an inherent dishonesty.

22. It is relevant that Mr. Fryers and his wife are now separated. He no longer faces the pressure to preserve the family in the interests of his young children. Given the financial, professional and personal costs he has paid and will pay, we think Mr. Fryers recognizes the errors he has made and will not repeat them.

23. It is not often that a member comes before discipline committee without expressing remorse. In Mr. Fryers' case, we are satisfied that the remorse is genuine, and that he will make the most of this opportunity to rehabilitate himself.

24. It is also relevant that Mr. Fryers' employer, which faces some difficulties with regulators because of his misconduct, has supported him. At the time of the hearing, it was not known whether Mr. Fryers would lose his job or be demoted. Clearly, at best he will be working in an environment where there will be no room for him to repeat the misconduct, even if he were so inclined.

25. When the misconduct in this case is compared to other misconduct which has resulted in expulsion in the past, it is clear that the misconduct before us is very serious, and we did consider expulsion.

26. Mr. Fryers prepared inaccurate tax returns for and at the request of his sister-in-law. While he cautioned her that she ought to file proper returns, he should have gone further and refused to assist her unless the returns were proper. It appears that it was his sister-in-law's complaint to the Institute that resulted in the laying of charges against him, which in itself helps shed some light on the kind of family pressure Mr. Fryers was under. His misconduct was personal in that he under-reported his income for the years 1995, 1996 and 1997, and he took advantage of his position as an officer of the trust company when he filed T4 summaries which were inaccurate.

27. In this case, the three infractions over a period of three years are aggravating circumstances. It was also an aggravating circumstance that Mr. Fryers knew his conduct was wrong, and that he was not being honest with either the tax authorities or an employer who trusted him and treated him honestly and fairly.

28. While the motive for the misconduct helped this panel to assess the members' potential for rehabilitation, it is not a strong mitigating factor in so far as the misconduct itself is concerned. The exercise of bad judgement in a good cause, while better than the exercise of bad judgement in a bad cause, is still unacceptable. Moreover, Mr. Fryers should have known that the efforts to appease his wife would only work temporarily because such conduct would not go undetected indefinitely.

29. Mr. Fryers' forthright way of dealing with the problem subsequent to its discovery, his dealing with his employer, and his dealing with the Institute, are mitigating factors. It is also a mitigating factor that he is making the appropriate arrangements with the Canada Customs and Revenue Agency. It is relevant that at the end of the day, the money which should have been paid will have been paid.

30. While it was a difficult decision, the panel concluded that a substantial fine and lengthy suspension would satisfy the requirement of general deterrence, and provide an opportunity for Mr. Fryers to continue to rehabilitate himself, which we think is in the public interest, the profession's interest, and his interest.

31. After deliberation, the panel made the following order:

ORDER

IT IS ORDERED in respect of the charges:

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

2. THAT Mr. Fryers be and he is hereby fined the sum of \$10,000, to be remitted to the Institute within two (2) years from the date this Order is made.
3. THAT Mr. Fryers be and he is hereby suspended from the rights and privileges of membership in the Institute for a period of two (2) years from the date this Order is made.
4. THAT notice of this Decision and Order, disclosing Mr. Fryer's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
5. THAT Mr. Fryers surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Order is made, to be held during the period of suspension and thereafter returned to Mr. Fryers. In the event Mr. Fryers fails to surrender his certificate of membership within this ten day period, his suspension pursuant to paragraph 3 shall be extended one day for each day the certificate remains undelivered to the secretary.
6. THAT in the event Mr. Fryers fails to comply with any of the requirements of this Order, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified in paragraph 4 hereof, and in *The Globe and Mail*.

Reprimand

32. In keeping with past cases, the panel ordered that the member be reprimanded in writing by the chair of the hearing, to stress to him the serious nature of the offences, and the unacceptability of his conduct as a chartered accountant.

Fine and Suspension

33. While the fine and suspension will be a specific deterrent to Mr. Fryers, the quantum of the fine and the length of the suspension were imposed as a general deterrent. After reviewing precedents, the panel concluded that a \$10,000 fine and a two-year suspension would be an effective general deterrent.

34. The two-year period given to pay the fine is necessary because of this member's financial position. In Mr. Fryers' circumstances, a \$10,000 fine is a very significant sanction.

35. The two-year suspension is also a significant suspension for Mr. Fryers. While he is not in public practice, his employer has had to report his misconduct to the Superintendent of Financial Institutions. Both the employer and Mr. Fryers will be under the scrutiny of their respective regulator, and Mr. Fryers will not enjoy the benefit of his professional designation for a substantial period of time.

Notice

36. As the governing body of chartered accountants in Ontario, the Institute must both govern and be seen to govern the profession, and accordingly the giving of notice of decisions and orders of the discipline committee is the usual practice. If notice of disciplinary decisions and orders is not given, the public and the profession will not be aware that the Institute is fulfilling its statutory duty, and the principle of general deterrence will not be served. This is not a rare and unusual case in which it would be inappropriate to publish the name of the member.

DATED AT TORONTO THIS 14TH DAY OF MAY, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

N.J. DIRENZO, FCA
D.M. FORTNUM, FCA
A. HANSON, CA
G.R. PEAL, CA
D.J. ANDERSON (Public representative)

APPEAL COMMITTEE re Perry Fryers

DECISION AND REASONS IN THE MATTER OF: An appeal by **PERRY FRYERS**, a suspended member of the Institute, of the Decision and Order of the Discipline Committee made on February 14, 2001 pursuant to the bylaws of the Institute, as amended.

DECISION AND REASONS FOR DECISION MADE OCTOBER 24, 2001

These proceedings before a panel of the appeal committee of the Institute of Chartered Accountants of Ontario were convened on October 24, 2001.

Mr. Paul Farley attended on behalf of the professional conduct committee. Mr. Perry Fryers attended without counsel, and acknowledged that he had been advised of his right to be represented by counsel.

Mr. Fryers' appeal was confined to the issue of the fine levied pursuant to the order of the discipline committee made on February 14, 2001. Mr. Fryers asked that the fine be set aside or, alternatively in argument before the panel, that it be substantially reduced.

After reviewing the documentation and hearing the submissions of the parties, this panel of the appeal committee dismissed Mr. Fryers' appeal and confirmed the discipline committee's order. The parties were advised that written reasons would follow in due course, and these are those reasons.

BACKGROUND

Before the discipline committee Mr. Fryers pleaded guilty to and was found guilty of four charges of signing or associating himself with statements, representations or financial statements which he knew to be false or misleading, contrary to Rule 205; and one charge of knowingly lending himself and/or his services to an unlawful activity, contrary to Rule 213.

After finding the member guilty of the charges, and hearing submissions as to sanction from the parties, the discipline committee, after due deliberation, made the following sanctions order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Fryers be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Fryers be and he is hereby fined the sum of \$10,000, to be remitted to the Institute within two (2) years from the date this Order is made.
3. THAT Mr. Fryers be and he is hereby suspended from the rights and privileges of membership in the Institute for a period of two (2) years from the date this Order is made.

4. THAT notice of this Decision and Order, disclosing Mr. Fryer's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
5. THAT Mr. Fryers surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Order is made, to be held during the period of suspension and thereafter returned to Mr. Fryers. In the event Mr. Fryers fails to surrender his certificate of membership within this ten day period, his suspension pursuant to paragraph 3 shall be extended one day for each day the certificate remains undelivered to the secretary.
6. THAT in the event Mr. Fryers fails to comply with any of the requirements of this Order, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified in paragraph 4 hereof, and in *The Globe and Mail*.

SUBMISSIONS OF THE PARTIES

In his submissions, Mr. Fryers stated that:

- he was representing himself upon his appeal to save costs;
- he has been considering filing for bankruptcy and has consulted a trustee in bankruptcy in this regard;
- he does not want an inability to pay his fine to interfere with his reinstatement to membership in good standing;
- since his matrimonial separation three years ago his life has been spiraling downhill;
- while at the time of the discipline hearing he thought his matrimonial case might settle, it has not settled but is instead heading for trial, and has become and continues to be a very expensive proceeding;
- he has not found new employment since his termination from Equitable Trust, and has found it embarrassing during job interviews explaining why he is no longer with his former employer;
- when he was before the discipline committee he had the full support of the president of Equitable Trust;
- though aware of the possibility, the discipline panel did not know when it made its sanctions order and set the quantum of the fine that he was going to lose his job, as a result of which the fact that he has subsequently lost his job is new evidence rendering the fine that was imposed excessive;
- in his view the fine imposed by the discipline committee was excessive in any event in the circumstances of the case;
- the two year suspension alone is a big enough general deterrent that a fine in addition is unnecessary.

Mr. Farley stated in his submissions that:

- Mr. Fryers prepared false and misleading income tax returns;
- he received bonuses from his employer for three successive years which he did not declare as income;
- he claimed Institute membership fees as tax deductions even though they were paid by his employer;
- he was able to get away with the above misconduct because he was the CFO of his employer's company and therefore in a position of trust;
- Mr. Fryers' transgressions were not minor matters, and many members in the past have been expelled for similar misconduct;
- the discipline committee could have ordered Mr. Fryers' expulsion, and such an order would have been within the range of appropriate sanctions for the type of misconduct engaged in, but decided for the reasons stated by it not to impose expulsion in this case;
- suspension – even the lengthy suspension of two years ordered by the discipline committee – does not provide sufficient general deterrence in the circumstances of this case without the fine imposed;
- the discipline panel took into account when fashioning its sanctions order the support given to Mr. Fryers by the president of Equitable Trust, and the fact that the member's job with Equitable Trust was in jeopardy;
- as the possibility that Mr. Fryers would lose his job was taken into consideration by the discipline panel when it made its sanctions order, the fact that this subsequently happened cannot be characterized as new evidence.

REASONS FOR DECISION

At the outset of its deliberations, the panel considered whether or not evidence arising subsequent to the discipline committee hearing which was now being raised by the appellant should be permitted into evidence. The new evidence related to the facts raised by Mr. Fryers that since the discipline hearing he had lost his job at Equitable Trust, and his matrimonial dispute which he had previously thought was going to be settled was in fact heading for trial.

On the issue of admission of new evidence, the panel reviewed the appeal committee decision in the case of *Barry Michael Garside*, heard on October 21, 1999, and the Ontario Court of Appeal case of *R. v. Edwards* (1976) 28 O.R.(3d) p. 54, both contained in the Respondent's Book of Authorities.

The panel observed that if it permitted new evidence in this case, it would in effect be allowing Mr. Fryers to have a new hearing on the issue of sanctions. While we agreed that under certain circumstances new evidence could be introduced, we determined that such new evidence would have to consist of significant new facts and be exceptional in the circumstances. The panel concluded that the items raised by Mr. Fryers did not meet these criteria, as the discipline committee was aware when formulating its order as to sanction that Mr. Fryers was having matrimonial difficulties and was separated from his wife, and that he was exposed to job loss or reassignment. The proposed new evidence was therefore not permitted.

The panel noted that the discipline committee had clearly considered whether expulsion was in order or whether a suspension and significant fine was more appropriate, and concluded that the discipline committee had fashioned a penalty that took into consideration the interests of the public, the interests of the profession, and, by permitting him to rehabilitate himself, the interests of Mr. Fryers as well.

The issue the panel had to decide was whether or not the discipline committee, upon consideration of all the evidence before it, had properly exercised its discretion and imposed a sanction within an appropriate range of sanctions given the facts of this particular case. As has been said by appeal panels in the past, unless it is determined that an error in principle was made by the discipline committee, 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 imposed and substitute its judgment for that of the discipline committee.

After considering the submissions made, the appeal committee concluded that the discipline committee properly considered and applied the principles of sentencing, and imposed a sanction within the range of sanctions appropriate to the professional misconduct demonstrated in this case. Accordingly, the appeal committee determined there to be no basis upon which to set aside or reduce the fine levied against Mr. Fryers, and, as a result, dismissed his appeal and confirmed the order of the discipline committee.

DATED AT TORONTO, THIS 28TH DAY OF NOVEMBER, 2001
BY ORDER OF THE APPEAL COMMITTEE

B.L. STEPHENS, CA – PANEL CHAIR
THE APPEAL COMMITTEE

MEMBERS OF THE PANEL

A.D. BOSSIN, CA
J.J. LONG, CA
S.F. MITCHELL, CA
E. ZAVERSHNIK, CA
B.W. BOWDEN (Public representative)