

Ray Fredrick Bott: Summary, as Published in *CheckMark*

Ray Fredrick Bott, of Kitchener, was found guilty by the discipline committee of three charges of professional misconduct, laid by the professional conduct committee, namely

- one charge, under Rule of Professional Conduct 201, of failing to conduct himself in a manner which maintains the good reputation of the profession and its ability to serve the public interest;
- one charge, under Rule of Professional Conduct 205, of associating himself with a letter which he knew or should have known was false or misleading; and
- one charge, under Rule of Professional Conduct 217.1, of advertising in a manner which he knew or should have known was false or misleading.

The committee ordered that Mr. Bott

- be reprimanded in writing by the chairman of the hearing;
- be assessed costs of \$1,500, to be paid within a specified time; and
- be suspended from membership in the Institute for a period of six months, subject to the condition that he deliver to the Institute within a specified time an undertaking to refrain from using specified letterhead or business cards and from holding out or implying specified things.

The committee also ordered that notice of the decision and order, disclosing Mr. Bott's name, be given to the Kitchener-Waterloo Record, The Globe and Mail, Canadian Business magazine and The Bottom Line.

Mr. Bott appealed the discipline committee's order to the Council-Appeal Committee, which dismissed the appeal and confirmed the discipline committee's order.

Failure to comply with the third term of the order as set out above resulted in Mr. Bott's expulsion from membership.

CHARGE(S) LAID re Ray Fredrick Bott

The Professional Conduct Committee hereby makes the following charges against Ray Frederick Bott, a member of the Institute:

1. THAT, the said Ray Frederick Bott, in or about the month of October 1986, associated himself with a letter, addressed to the Institute of Chartered Accountants of Ontario and dated October 26, 1986, which he knew or should have known was false or misleading, contrary to Rule 205(1) of the Rules of Professional Conduct adopted June 11, 1973 as amended, in that:
 - a) the letter refers to Ray F. Bott as a federal agent on behalf of the Crown when he is not such an agents and
 - b) the letterhead refers to Ray F. Bott as "A Counsel for the Minister of National Revenue" when he is not; and
 - c) the letterhead purports to be that of a federal government office through the use of symbols of the federal *government* including *the bar and* maple leaf in conjunction with the words "Office of the ombudsman" and the word "Canada" with maple leaf flag over the final "a" when there is no such government office with which Ray F. Bott is associated.
2. THAT, the said Ray Frederick Bott, in or about the month of October 1986, advertised in a manner which he knew or should have known was false or misleading, in that he used letterhead which identified himself as a "Counsel for the Minister of National Revenue" when he was not and which implied he was associated with a federal government office when he was not, contrary to Rule 217.1(a) of the Rules of Professional Conduct adopted June 11, 1979.
3. THAT, the said Ray Frederick Bott, from the month of October 1986 to the present, has failed to conduct himself at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that he has associated himself with letterhead and business cards which refer to himself as a Counsel for the Minister of National Revenue and otherwise identify himself as being associated with the federal government of Canada when he is not, contrary to Rule 201 of the Rules of Professional Conduct adopted June 11, .1973.

DATED at Toronto this 9th day of July 1987.

J.R. BONES, FCA - CHAIRMAN
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Ray Fredrick Bott

DECISION AND ORDER IN THE MATTER OF: Charges against RAY FREDERICK BOTT, CA, a member of the Institute, under Rule 201 of the Rules of Professional Conduct adopted June 11, 1973, and under Rule 205(1) of the Rules of Professional Conduct adopted June 11, 1973, as amended, and under Rule 217.1(a) of the Rules of Professional Conduct adopted June 11, 1979

DECISION AND ORDER MADE JANUARY 6, 1988

FINDING

THAT the discipline committee, having seen, heard and considered the evidence and submissions for both the professional conduct committee and the member charged on the 4th and 5th days of January 1988, and for the reasons delivered this day, finds Ray Frederick Bott guilty of charges Nos. 1, 2 and 3.

ORDER

The discipline committee, for the reasons delivered this day, ORDERS as follows:

1. THAT Ray Frederick Bott be reprimanded in writing by the chairman of the hearing.
2. THAT Mr. Bott be charged costs of One thousand five hundred dollars (\$1,500.00), to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws. In the event Mr. Bott fails to pay the costs within the specified period he is thereupon suspended from the rights and privileges of membership in the Institute for a period of five (5) months. Notice of his suspension, disclosing his name, is to be given in the manner specified in paragraph 4.
3. THAT Mr. Bott be suspended for a period of six (6) months from the rights and privileges of membership in the Institute, effective from the date this Decision and Order becomes final under the bylaws, subject to the condition that he deliver to the Institute within one month an undertaking to refrain:
 - (a) from using letterhead, business cards or any other form of advertising, as defined in Bylaw 2(1)(b) of the Institute of Chartered Accountants of Ontario in a form indicated on the letterhead in exhibit 3 and on the business card in exhibit 5;
 - (b) from holding out or implying that he is, or is acting for or is associated with, an agent of the federal government or of the Crown, unless he is officially authorized so to do;
 - (c) from holding out that he is "A counsel for the Minister of National Revenue" or that he is in any way qualified to practise law unless he becomes a member in good standing of a provincial bar; and

- (d) from holding out that he is an ombudsman, or holds such office, or is associated with an "Office of the Ombudsman" unless he is officially authorized so to do.
- 4. THAT notice of the final Decision herein and this Order, disclosing Mr. Bott's name, be given after this Decision and Order becomes final under the bylaws, including:
 - (a) by publication in Check Mark;
 - (b) to the Public Accountants Council for the Province of Ontario;
 - (c) to the Canadian Institute of Chartered Accountants, and any other institute of chartered accountants affiliated with the Canadian Institute of Chartered Accountants in which Mr. Bott has membership; and
 - (d) to the Kitchener-Waterloo Record, The Globe and Mail, Canadian Business magazine and The Bottom Line.
- 5.
 - (a) THAT in the event Mr. Bott is suspended: pursuant to paragraph 2 of this Order and fails to pay the costs before the completion of the suspension, he shall thereupon be expelled from membership in the Institute and notice of his expulsion, disclosing his name, shall be given in the manner indicated in paragraph 4.
 - (b) THAT in the event Mr. Bott fails to comply with the requirements of paragraph 3 of this Order within the time period specified, he shall thereupon be expelled from membership in the Institute and notice of his expulsion, disclosing his name, shall be given in the manner indicated in paragraph 4.
 - (c) THAT in the event Mr. Bott is expelled under paragraph 5(b) of this Order, the costs referred to in paragraph 2 of this Order shall be payable forthwith.
- 6. THAT Mr. Bott be and he is hereby ordered to surrender the certificate of membership in the Institute, bearing his name, to the registrar of the Institute within ten (10) days of his suspension from the rights and privileges of membership in the Institute.

DATED AT TORONTO, THIS 8TH DAY OF FEBRUARY, 1988
BY ORDER OF THE DISCIPLINE COMMITTEE

B.W. STEPH SON - SECRETARY
THE DISCIPLINE COMMITTEE

DISCIPLINE COMMITTEE re Ray Fredrick Bott

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against RAY FREDERICK BOTT, CA, a member of the Institute, under Rule 201 of the Rules of Professional Conduct adopted June 11, 1973, and under Rule 205(1) of the Rules of Professional Conduct adopted June 11, 1973, as amended, and under Rule 217.1(x) of the Rules of Professional Conduct adopted June 11, 1979.

DECISION AND REASONS FOR DECISION MADE JANUARY 6, 1988

These proceedings before the discipline committee of the Institute of Chartered Accountants of Ontario were convened on October 13, 1987. In order to ensure that the member was not deprived of every opportunity to adequately prepare and meet the charges, an adjournment was granted to the member charged on a peremptory basis. The proceedings were reconvened and heard on January 4, 5 and 6, 1988.

Mr. Paul Farley attended on behalf of the professional conduct committee and Mr. Bott attended with, and was represented by, his agent Mr. Gary Sorenson. The professional conduct committee laid three charges of professional misconduct against Mr. Bott and he pleaded not guilty to each charge.

After submissions were concluded on January 5, 1988, the discipline committee considered the evidence and submissions. In accordance with the bylaws of the Institute of Chartered Accountants of Ontario, the committee now sets out its decision and reasons for the decision.

The committee, after seeing, hearing and considering all the evidence and the submissions, finds Ray Frederick Bott guilty of charges Nos. 1, 2 and 3. The reasons for these *findings* are the following.

With respect to charge No. 1, Mr. Bott's association with the letter dated October 27, 1986, addressed to the Institute, which was filed as Exhibit 3 in the proceedings, was established by the evidence of a witness for the professional conduct committee, who identified the letter and other correspondence with the Institute. This witness identified Mr. Bott as the member associated with the subject letter and confirmed Mr. Bott's appearance before the professional conduct committee in response to the correspondence.

The evidence of another witness for the professional conduct committee established that the federal government did not acknowledge or authorize the office or associations held out by Mr. Bott, *and specifically* demanded that Mr. Bott cease and desist from using the symbols of the federal government, the reference to the "Office of the Ombudsman" *and the* phrase "A Counsel for the Minister of National Revenue."

With respect to the particulars of charge No. 1, the committee is of the view that Mr. Bott knew or should have *known that* the letter of October 27, 1986, was false or misleading in that:

1. The letter stated that Mr. Bott was a federal agent on behalf of the Crown, pursuant to Sections 241 and 244(1), (13), (14y and (16) of the Income Tax Act. The evidence, however, was that Mr. Bott is not an employee or representative of the Minister of

National Revenue nor of the Department of Justice and a definition of "agent" under the law does not support the defence's contention of an agency relationship being "one authorized by another to act for him."

The defence is based on an interpretation of Section 241 of the Income Tax Act and especially the "authorized person" definition in Section 241(10). The committee is satisfied that Mr. Bott does not fall within the definition of that section as there was no evidence Mr. Bott was employed "to assist in carrying out the purposes and provisions of this Act." The committee is not persuaded by the defence's argument that "authorized person" is *synonymous with* "agent" in the interpretation of Section 241 but, rather,, accepts the *contention of* counsel for the professional conduct committee that such an interpretation is not reasonable as it would lead to the untenable *conclusion that* every ex-employee of the Minister of National Revenue who was engaged to assist in carrying out the purposes and *intentions of* the Income Tax Act would *continue, forever,* as such an agent of the Minister, for other than purposes of confidentiality, regardless of the duration of the employment or the length of time lapsed since its termination. The committee is also persuaded by the argument of counsel for the professional conduct committee that the definitions referred to by, the defence are restricted to Section 241 of the Income Tax Act and do not flow to Section 244 thereof. The committee thus finds that-' Mr. Bott is not a federal agent on behalf of the Crown.

2. The letterhead on the letter of October 27, 1986, refers to Mr. Bott as "A Counsel for the Minister of National' Revenue." The evidence indicated that to be a counsel for the Minister of National Revenue one had to be a member of a provincial bar, and thus a lawyer, and it was an agreed statement of fact by both parties that Mr. Bott is not a lawyer. Furthermore, as stated above, the evidence was that Mr. Bott is not employed by the Minister of National Revenue nor by the Minister of Justice in any capacity whatsoever. The committee thus finds that Mr. Bott is not "A Counsel for the Minister of National Revenue."
3. In the view of the committee, the letterhead on the letter of October 27, 1986, implies that there is a federal "Office of the ombudsman" through use of the phrase "Office of the Ombudsman" in conjunction with the bar and maple leaf and the word "Canada" with the maple leaf flag over the final "a". The evidence, however, was that there exists no such federally authorized office with which Mr. Bott could be or is associated. The evidence also was that there exists no federal office that handles matters on behalf of taxpayers. The evidence further established, and *the defence acknowledged, that* the use of symbols of the Crown, being in this case the bar and maple leaf and the word "Canada" with a maple leaf over the final "a", is prohibited by the Trade Marks Act. Accordingly, the committee finds that the letterhead purports to be that of a federal government office when there is no such government office with which Mr. Bott is associated.

With respect to charge No. 2, advertising, as defined in the bylaws of the Institute, includes representations made in a member's practice of public accounting or any related function referred to in Rule 408 of the Rules of Professional Conduct and involves such things as stationery, announcements and business cards. Mr. Bott used letterhead identifying himself as "A Counsel for the Minister of National Revenue" and used federal symbols which implied that he was associated with a federal government office. Rule 217.1(a) of the Rules of Professional Conduct prohibits advertising which a member knows or should know is false or misleading. The committee is persuaded by the evidence, as stated in the reasons related to charge No. 1 above, that Mr. Bott is not "A Counsel for the Minister of National Revenue" and cannot be associated with a non-existent federally authorized office. Thus his advertising is misleading and he should know that.

The committee is not swayed by the defence's argument that the committee cannot make findings in law until the matter has been dealt with by a court of competent jurisdiction nor is the committee persuaded by the defence argument that Mr. Bott is a "federal tribunal."

The committee thus finds that Mr. Bott, in or about the month of October, 1986, advertised in a manner which he knew or should have known was false or misleading.

With respect to charge No. 3, Rule 201 of the Rules of Professional Conduct requires members to conduct themselves at all times in a *manner which* will maintain the good reputation of the profession. A basic tenet of the Institute, the profession and its members is to *maintain the* ability to lend credibility to information through knowledge, objectivity and integrity. Consistent with the *findings concerning charges* Nos. 1 and 2, Mr. Bott should have *known* he was misleading the public through his letterhead and business card by claiming he held positions and associations which are unsupportable and/or non-existent. His failure to maintain the good reputation of the profession and its ability to serve the public interest is evidenced by the fact of the association and positions indicated on the misleading letterhead and business card having received publicity *when they were* false and misleading. False or misleading associations by members clearly fail to *maintain the* good reputation of the profession and thus its ability to serve the public interest.

Accordingly, the committee finds that Mr. Bott failed to conduct himself at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest.

After reaching its decision of guilty on the three charges laid, the committee then heard submissions as to *sanctions* and, following a lengthy deliberation on January 6, 1988, made the following order:

1. THAT Ray Frederick Bott be reprimanded in writing by the chairman of the hearing.
2. THAT Mr. Bott be charged costs of One thousand five hundred dollars (\$1,500.00), to be remitted to the Institute within thirty (30) days from the date this Decision and order becomes final under the bylaws. In the event Mr. Bott fails to pay the costs within the specified period he is thereupon suspended from the rights and privileges of *membership in the Institute for a period of five (5) months*. Notice of his *suspension, disclosing* his name, is to be given in the manner specified in paragraph 4.
3. THAT Mr. Bott be suspended for a period of six (6) months from the rights and privileges of membership in the Institute, effective from the date this Decision and order becomes final under the bylaws, subject to the condition that he deliver to the Institute within one month an undertaking to refrain:
 - (a) from using letterhead, business cards or any other form of advertising, as defined in Bylaw 2(1)(b) of the Institute of Chartered Accountants of Ontario in a form indicated on the letterhead in exhibit 3 and on the business card in exhibit 5;
 - (b) from holding out or implying that he is, or is acting for or is associated with, an agent of the federal government or of the Crown, unless he is officially authorized so to do;

- (c) from holding out that he is "A counsel for the Minister of National Revenue" or that he is in any way qualified to practise law unless he becomes a member in good standing of a provincial bar; and
 - (d) from holding out that he is an ombudsman or holds such office, or is associated with an "Office of the Ombudsman" unless he is officially authorized so to do.
- 4. THAT notice of the final Decision herein and this Order, disclosing Mr. Bott's name, be given after this Decision and Order becomes final under the bylaws, including:
 - (a) by publication in Check Mark; (b) to the Public Accountants Council for the Province of Ontario; (c) to the Canadian Institute of Chartered Accountants, and any other institute of chartered accountants affiliated with the Canadian Institute of Chartered Accountants in which Mr. Bott has membership; and (d) to the Kitchener-Waterloo Record, The Globe and Mail, Canadian Business magazine and The Bottom Line.
- 5.
 - (a) THAT in the event Mr. Bott is suspended pursuant to paragraph 2 of this Order and fails to pay the costs before the completion of the suspension, he shall thereupon be expelled from membership in the Institute and notice of his expulsion, disclosing his name, shall be given in the manner indicated in paragraph 4.
 - (b) THAT in the event Mr. Bott fails to comply with the requirements of paragraph 3 of this Order within the time period specified, he shall thereupon be expelled from membership in the Institute and notice of his expulsion, disclosing his name, shall be given in the manner indicated in paragraph 4.
 - (c) THAT in the event Mr. Bott is expelled under paragraph 5(b) of this Order, the costs referred to in paragraph 2 of this Order shall be payable forthwith.
- 6. THAT Mr. Bott be and he is hereby ordered to surrender the certificate of membership in the Institute, bearing his name, to the registrar of the Institute within ten (10) days of his suspension from the rights and privileges of membership in the Institute.

Briefly, the reasons for the committee's sanctions are as follows:

- 1. The committee is of the view that a reprimand is necessary as a deterrent to the member charged and to stress the unacceptability of his conduct as a chartered accountant.
- 2. The committee is of the view that the imposition of costs is necessary. In view of its findings of the member's guilt on the charges laid, it is appropriate that Mr. Bott be assessed a reasonable allocation of costs.
- 3. It is the committee's *opinion that* a suspension is necessary to serve not only as an individual deterrent the member charged not to *continue the* practices which are the subject of these charges but also as a general deterrent to all members of the profession.

4. The committee has ordered publicity and notice of this order, *including disclosure* of the member's name, again as both a specific deterrent to the member charged and as a general deterrent to all members. In addition, the committee considers publicity necessary to indicate to the public that the profession is policing itself so as to retain public confidence in the profession's ability to govern itself.
5. The committee is of the view that the *contingency of* expulsion in the event of *non-compliance with* the other terms of the order is a necessary *sanction to* the preservation of the profession's good reputation and ability to serve the public interest, as a way of enabling it to ultimately deal with members who will not be bound by its rules.
6. The committee demands return of the member's certificate so that while the member is suspended and thus not a member in good *standing in* the Institute he may not display his certificate of membership in the office of his public practice or elsewhere as evidence of good *standing*. *The* certificate of membership will be returned to the member when he fulfils the *conditions of* the order and again becomes a member in good *standing of* the Institute.

C.F. FLEMING, FCA- DEPUTY CHAIRMAN
THE DISCIPLINE COMMITTEE

COUNCIL-APPEAL COMMITTEE re Ray Frederick Bott

REASONS FOR THE DECISION AND ORDER OF THE APPEAL COMMITTEE IN THE MATTER OF: An appeal lodged by Ray Frederick Bott, CA, a member of the Institute, against the decision and order of the discipline committee dated, February 8, 1988.

This appeal came before this panel of the Council-Appeal committee on January 31, 1989 in the presence of counsel for Mr. Bott and counsel for the professional conduct committee. The only provision of the order of the discipline committee that was at issue, was that portion of paragraph 3 of the order pertaining to Mr. Bott's suspension from membership.

DECISION

The Council-Appeal committee, after reviewing the evidence and hearing the submissions of both parties, upheld the decision and order of the discipline committee.

ORDER

That Mr. Bott's appeal be dismissed.

REASONS FOR DECISION

Mr. Wood, Mr. Bott's counsel, submitted that a period of suspension would be an unduly harsh sanction for Mr. Bott. Mr. Wood contended that Mr. Bott had received bad legal advice (from an agent who was not Mr. Wood); had not harmed any member of the general public; and had had an unblemished career until this instance.

Mr. Wood further submitted that suspending Mr. Bott from using the CA designation would prohibit him from signing financial statements and would, therefore, impair his ability to earn a living.

The Council-Appeal committee duly noted that Mr. Bott, by his use of letterhead and business cards, held himself out to be something that he was not. Moreover, Mr. Bott ignored demands from the federal government and from the professional conduct committee, to cease and desist from continuing with these misrepresentations. The publicity generated as a result of his actions was a further, tangible demonstration of Mr. Bott's brazen disregard for the protection of the public interest and the good reputation of the profession.

In considering the sanction the Council-Appeal committee was particularly disturbed by Mr. Bott's apparent lack of remorse or regret for his misconduct.

Accordingly, the Council-Appeal committee agreed with the reasons of the discipline committee, where it states on page 6:

- "3. It is the committee's opinion that a suspension is necessary to serve not only as an individual deterrent to the member charged not to continue the practices which are the subject of these charges but also as a general deterrent to all members of the profession."

In addition, the Council-Appeal committee noted that the suspension of Mr. Bott's use of the CA designation would not prohibit him from signing financial statements. Only the removal of Mr. Bott's public accounting license would prohibit him from signing financial statements. The power to grant or revoke public accounting licenses remains within the purview of the Public Accountants Council. The Public Accountants Council will, however, be advised of Mr. Bott's conviction.

For all the above reasons, the Council-Appeal committee determined that the discipline committee's decision on sanction was not unduly harsh but, rather, appropriate in the circumstances. Mr. Bott's appeal, therefore, was dismissed.

Dated at Toronto this 28th day of June 1989

R.G. Gage,
Chairman

G.F. Parker, CA
Panel Member

G. Klosler
Panel Member

K.B. Ramsay, CA
Panel Member

G. Mulcahy, FCA
Panel Member

K.D. Zabel, CA
Panel Member