

Robert Bortolussi: Summary, as Published in *CheckMark*

Robert Bortolussi, of London, was found guilty of a charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest. The charge arose out of Mr. Bortolussi's criminal conviction for fraud. Over a two-year period, while an officer, director or agent of a group of companies owned by his father and sisters, he failed to deduct, under-remitted, or failed to remit, income taxes, Canada Pension Plan and Unemployment Insurance deductions and contributions, and Goods and Services Tax collected. Mr. Bortolussi was fined \$10,000 and expelled from membership.

CHARGE(S) LAID re Robert Bortolussi

The Professional Conduct Committee hereby makes the following charge against Robert Bortolussi, CA, a member of the Institute:

1. THAT, the said Robert Bortolussi, failed to conduct himself in a manner that maintains the good reputation of the profession and its ability to serve the public interest in that, on or about the 26th day of May 1997, he was convicted of those offences under the Criminal Code shown as Counts 1 through 7 inclusive in the indictment attached as Schedule "A", contrary to Rule 201.1 of the rules of professional conduct.

Dated at Toronto this 15th day of July 1997.

NICHOLAS M. HODSON, CA – DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Robert Bortolussi

DECISION AND ORDER IN THE MATTER OF: A charge against **ROBERT BORTOLUSSI, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE AUGUST 27, 1997

DECISION

THAT, having seen and considered the evidence, including the Agreed Statement of Facts, filed, and having heard the plea of guilty to the charge, the Discipline Committee finds Robert Bortolussi guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Bortolussi be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Bortolussi 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 Decision and Order becomes final under the bylaws.
3. THAT Mr. Bortolussi be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Bortolussi's name, be given after this Decision and Order becomes final under the bylaws:
 - to the Public Accountants Council for the Province of Ontario;
 - to the Canadian Institute of Chartered Accountants;
 - by publication in *CheckMark*; and
 - by publication in the *London Free Press*.
5. THAT Mr. Bortolussi 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 15TH DAY OF SEPTEMBER, 1997
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Robert Bortolussi

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: A charge against **ROBERT BORTOLUSSI, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE AUGUST 27, 1997

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on August 27, 1997 to hear a charge brought by the professional conduct committee against Mr. Robert Bortolussi, CA. Mr. Bortolussi was convicted of fraud in the Ontario Court (General Division). The fraud charges related to the failure of Mr. Bortolussi to remit funds payable to the Government of Canada under the *Income Tax Act*, the Canada Pension Plan, the *Unemployment Insurance Act* and the *Excise Tax Act*, during the period January 1, 1992 to January 31, 1994.

Mr. Bortolussi pleaded guilty to the charge, and stated that he understood that he could be found guilty solely on the basis of his plea.

The professional conduct committee was represented by Mr. Paul F. Farley. Mr. Bortolussi represented himself, and confirmed for the record that he was aware of his right to be represented by counsel.

No witnesses were called by either Mr. Farley or Mr. Bortolussi. An agreed statement of facts and a certified copy of the indictment against Mr. Bortolussi, endorsed by the court with a finding of guilt on each of seven charges, were filed as exhibits.

The determination and sanctions imposed were made known at the hearing. These are the written reasons for the decision and order that has already been sent to the parties.

DECISION ON THE CHARGE

Agreed Facts

Mr. Bortolussi was an officer, director or agent for a group of companies that operated as masonry sub-contractors for the building industry throughout Ontario. During the period January 1, 1992 to January 31, 1994, he failed to deduct, under-remitted or failed to remit income taxes, Canada Pension Plan deductions and contributions, Unemployment Insurance deductions and contributions, and Goods and Services Tax collected. The shortfall amounted to approximately \$1.25 million. The companies are no longer in operation and it is unlikely that the balances owing will be paid.

The shares of the companies that failed to pay the taxes were owned by Mr. Bortolussi's father and sisters. The money was used to pay other creditors of the companies, apparently in an effort to keep the companies operating.

Mr. Bortolussi pleaded guilty to seven counts of fraud in the Ontario Court (General Division), and was found guilty thereof by a judge of that court.

Conclusion

The evidence corroborated Mr. Bortolussi's guilty plea to the charge laid by the professional conduct committee. Accordingly, the discipline committee found Mr. Bortolussi guilty of the charge of failing to conduct himself in a manner that would 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.

SANCTIONS ORDER

After finding the member guilty of the charge, the panel turned to a consideration of the appropriate sanction in the circumstances.

Counsel for the professional conduct committee submitted that the sanctions he requested were primarily directed to general deterrence and were:

- a letter of reprimand;
- a fine of \$15,000;
- expulsion; and
- full publicity of the discipline committee's decision and order.

Mr. Farley pointed out a number of aggravating factors, which, he submitted, the panel should take into account, namely that:

- this was a deliberate and calculated scheme carried out over a two-year period, involving a significant amount of money, of which there was little expectation of restitution;
- the companies for which Mr. Bortolussi was acting held the funds in trust, and Mr. Bortolussi's failure to remit them in full to the government was a breach of that trust;
- more than one company was involved in this fraud; and
- the agreed statement of facts filed with the court indicated that Mr. Bortolussi was not always truthful to the government's payroll auditors.

Mr. Farley cited as similar cases, that panels of the discipline committee had heard and decided on, those of Paul F. Kwiatkoski, David A. Davies, and Stephen M. Lutvak. He noted that the sanction ordered in all of those cases was expulsion of the member, since the cases involved, as did this one, moral turpitude.

Mr. Farley stated that although the principle of rehabilitation should generally be considered when determining the appropriate sanction, the professional conduct committee felt that, in this case, the principles of general deterrence and specific deterrence were of greater significance.

Mr. Bortolussi submitted that, while he was in general agreement with the sanctions requested, he had concerns about the quantum of the fine, as he had been unemployed since September, 1996, was facing sentencing by the criminal court judge, and was expecting to file for personal bankruptcy in the immediate future. Mr. Bortolussi requested that, should the panel deem a fine to be appropriate, he be given a lengthy period in which to pay.

Conclusion

In reaching its conclusions, the panel considered the principles of general deterrence, specific deterrence and rehabilitation.

The panel decided that a letter of reprimand to Mr. Bortolussi would stress the unacceptability of his actions, and serve to underline the fact that a chartered accountant has a duty to uphold the good reputation of the profession, regardless of circumstances. The panel identified the letter as a specific deterrent, and ordered that such a letter be prepared by the chair of the panel and sent to Mr. Bortolussi.

The panel agreed that the aggravating factors in this case compounded the seriousness of the charge, particularly the fact that Mr. Bortolussi had agreed that he had been less than entirely truthful when the government auditors were investigating. The panel also agreed with the characterization of Mr. Bortolussi's actions as moral turpitude. For these reasons, the panel ordered Mr. Bortolussi's expulsion from membership in the Institute.

In determining the amount of the fine, the panel considered that \$10,000, when coupled with expulsion, was appropriate in this case. In light of what the panel was told, it ordered that Mr. Bortolussi remit this amount to the Institute within two years.

The principle of general deterrence is served by publication of the discipline committee's decision and order. The panel believes that it is obligated to inform other chartered accountants and the public that there are consequences to actions such as those of Mr. Bortolussi. It is also aware of the requirement of the Institute that, in cases of expulsion, notice be given to the public in a newspaper in the area in which the member resides or works. The panel therefore ordered the usual form of publication of its decision and order in *CheckMark*, disclosing Mr. Bortolussi's name, and the provision of notice to the CICA and the Public Accountants Council. The panel also ordered that notice be published in the *London Free Press*.

DATED AT TORONTO THIS DAY OF OCTOBER, 1997
BY ORDER OF THE DISCIPLINE COMMITTEE

F.A. DROZD, FCA - CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

B.M. BYRNE, CA
S.A. GOODMAN, CA
R.D. WHEELER, FCA
B.A. TANNENBAUM, CA
N.C. AGARWAL (Public representative)