

Robert Lloyd Welsh: Summary, as Published in *CheckMark*

Robert Lloyd Welsh, of Hamilton, was found guilty of three charges 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 204.2 of failing to hold himself free of an influence, interest or relationship which impaired his professional judgment or objectivity or which, in the view of a reasonable observer, would impair his professional judgment or objectivity, and one charge under Rule 403 of practising public accounting under the name "Welsh & Company" when he was a sole proprietor. While engaged as the accountant for various clients, Mr. Welsh failed to file tax returns but represented to his clients that he had. He entered into an agreement with one client company to delay billing so as to suppress his income for the purposes of his matrimonial proceedings, and borrowed monies from the spouses of the company's shareholders while engaged to perform a review of the company's financial statements. He continued to practise under the name "Welsh & Company" as a sole practitioner long after being advised of and acknowledging his improper use, and even after the charge had been laid and the discipline process begun in respect of the matter. Mr. Welsh was fined \$10,000 and suspended for two years.

CHARGE(S) LAID re Robert Lloyd Welsh

The Professional Conduct Committee hereby makes the following charges against Robert L. Welsh, CA, a member of the Institute:

1. THAT, the said Robert L. Welsh, in or about the period March 26, 1997 to December 16, 1997, practised public accounting under the firm name "Welsh & Company" when he was the sole proprietor of the firm, contrary to Rule 403 of the rules of professional conduct.

Dated at Toronto this 16th day of December 1997.

EDWARD M. REITEROWSKI, CA B DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

CHARGE(S) LAID re Robert Lloyd Welsh

The Professional Conduct Committee hereby makes the following charges against Robert L. Welsh, CA, a member of the Institute:

1. THAT, the said Robert L. Welsh, in or about the period May 1998 to March 1999, while engaged as the accountant for Migar Enterprises Ltd., Mountain Card Shop Limited and Mountain Card Shop Holdings Inc. to prepare their tax returns and perform a review of the corporations' financial statements for the year ended February 28, 1998, 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:
 - (a) he did not file tax returns for his clients although he was engaged to do so;
 - (b) he represented to Michael Peck and others that the companies' tax returns for the year ended February 28, 1998 were filed with Revenue Canada when they were not; and
 - (c) he did not promptly return his client's telephone calls inquiring about the status of the tax returns and financial statements.
2. THAT, the said Robert L. Welsh, in or about the period January 1994 to December 1997, while he was engaged as the accountant for 642474 Ontario Inc., o/a Kenross Foodland to prepare and file the company's tax returns for the three years ended November 30, 1994, 1995 and 1996, 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:
 - (a) he did not file the tax returns although he was engaged to do so;
 - (b) he represented to his clients that the tax returns were filed with Revenue Canada when they were not; and
 - (c) he entered into an agreement with his clients to delay billing them for professional services rendered with the intent of suppressing his income for the purposes of his matrimonial proceedings.
3. THAT, the said Robert L. Welsh, in or about the period May 1997 to July 1998, while he was engaged to prepare financial statements and tax returns for Dr. Richard Casey and 2942542 Canada Inc., 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:
 - (a) he told ~~Dr. Casey~~ **his client** that he filed the corporate tax returns when he had not done so; and
 - (b) he did not prepare the corporate tax returns although he was engaged to do so.

4. THAT, the said Robert L. Welsh, in or about the period May to August 1993, while he was engaged to perform a review of the financial statements of 642474 Ontario Inc., failed to hold himself free of any influence, interest or relationship which impaired his professional judgment or objectivity or which, in the view of a reasonable observer, would impair his professional judgment or objectivity in that he borrowed \$5,000 from the spouses of the shareholders of the company, contrary to Rule 204.2.
5. THAT, the said Robert L. Welsh, in or about the period March 1997 to February 1998, while he was engaged to prepare monthly financial statements for 2942542 Canada Inc., failed to perform his professional services with due care and integrity contrary to Rule 202 of the rules of professional conduct, in that:
 - (a) he did not produce the statements on a timely basis;
 - (b) when he did produce the monthly statements, they were incomplete in that they did not include all revenues and expenses; and
 - (c) the May 1997 statement included an unexplained debit memo of \$200,374.
- ~~6. THAT, the said Robert L. Welsh, in or about the period May 1997 to July 1998, while he was engaged by Dr. Richard Casey and 2942542 Canada Inc. to conduct negotiations with Revenue Canada with respect to amounts owing for payroll deductions, he failed to retain his working papers, records or other documentation which reasonably evidence the nature and extent of the work done, contrary to Rule 218 of the rules of professional conduct.—Withdrawn by PCC~~

Dated at Toronto this 19th day of October, 1999.

MICHAEL T. CONNOLLY, FCA -- DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Robert Lloyd Welsh

DECISION AND ORDER IN THE MATTER OF: Charges against **ROBERT LLOYD WELSH, CA**, a member of the Institute, under **Rules 201.1, 202, 204.2, 218 and 403** of the Rules of Professional Conduct, as amended.

DECISION MADE OCTOBER 12 AND ORDER MADE NOVEMBER 10, 2000

DECISION

THAT, having seen, heard and considered the evidence relating to the charge dated December 16, 1997, including the agreed statement of facts, filed, and having heard the plea of guilty to the charge, the Discipline Committee finds Robert Lloyd Welsh guilty of the charge.

AND THAT, having seen, heard and considered the evidence relating to the charges dated October 19, 1999, including the agreed statement of facts, filed, charge No. 6 having been withdrawn, and particular (a) of charge No. 3 having been amended, and having heard the plea of guilty to charge No. 3 as amended, the Discipline Committee finds Robert Lloyd Welsh not guilty of charge No. 5, and guilty of charges Nos. 1, 2, 3 as amended, and 4.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Welsh be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Welsh be and he is hereby fined the sum of \$10,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Welsh be suspended from the rights and privileges of membership in the Institute for a period of two (2) years from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Welsh'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. Welsh 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.
6. THAT in the event Mr. Welsh fails to comply with any requirement 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 above and in *The Hamilton Spectator*.

DATED AT TORONTO THIS 24TH DAY OF NOVEMBER, 2000
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Robert Lloyd Welsh

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **ROBERT LLOYD WELSH, CA**, a member of the Institute, under **Rules 201.1, 202, 204.2, 218 and 403** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION MADE OCTOBER 12 AND ORDER MADE NOVEMBER 10, 2000

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on June 14, 2000 to commence the hearing of charges brought by the professional conduct committee against Robert Lloyd Welsh, a member of the Institute. The hearing continued on June 15, 21, 22, September 21, 22, October 12 and November 10, 2000.
2. The professional conduct committee was represented by Ms. Deborah McPhadden, who was accompanied by Mr. Michael Cashion, CA, the investigator appointed by the professional conduct committee. The member, who was present throughout, was represented by his counsel, Ms. Cynthia Amsterdam.
3. On October 12, 2000, after hearing the evidence with respect to the charges and listening to the submissions of both counsel, we deliberated and found Mr. Welsh guilty of one charge dated December 16, 1997, and four charges, as amended, dated October 19, 1999.
4. After our decision was announced, both parties were given an opportunity to call evidence with respect to sanction. Ms. McPhadden did not call evidence. Ms. Amsterdam called David Galloway, CA, and William Thompson, CA, before we adjourned for the day.
5. When the hearing resumed on November 10, 2000, Ms. Amsterdam called Dr. Traub-Warner, a psychiatrist, to testify on Mr. Welsh's behalf. After hearing the evidence and submissions, we deliberated, and when we reached a decision, the parties were called back into the Council Chamber and the terms of the order were made known.
6. The formal written decision and order, signed by the discipline committee secretary, was dated and sent to Mr. Welsh on November 24, 2000.
7. These are the reasons of the discipline committee given in writing pursuant to Bylaw 574. These reasons include the charges as well as the decision and order. As is often the case, there were issues which arose during the hearing, and directions were given as necessary. These reasons, as others in the past, do not make reference to all of the directions given or the reasons therefor. But there are two matters which we do make reference to in these reasons. The first is the decision not to accept the evidence of Mr. Davoren. The second is the decision to continue with the hearing on September 21, 2000, when counsel for the professional conduct committee asked for a new hearing because the transcript of Mr. Welsh's evidence-in-chief was not and would not be available.

THE CHARGES AND THE PLEA

8. At the commencement of the hearing, the notice of the assignment hearing, the notice of the hearing, and the charges, one charge dated December 16, 1997 and six charges dated October 19, 1999, were filed as exhibits. As a preliminary matter, Ms. McPhadden advised the committee that charge No. 6 of the charges dated October 19, 1999 was being withdrawn, and asked that particular (a) of charge No. 3 be amended to read "he told his client" rather than "he told Dr. Casey". The amendment was made on consent, and charge No. 6 was withdrawn.
9. The charge dated December 16, 1997 reads as follows:
 1. THAT, the said Robert L. Welsh, in or about the period March 26, 1997 to December 16, 1997, practised public accounting under the firm name "Welsh & Company" when he was the sole proprietor of the firm, contrary to Rule 403 of the rules of professional conduct.
10. The charges dated October 19, 1999, as amended, which are hereinafter referred to as the charges without reference to the date, read as follows:
 1. THAT, the said Robert L. Welsh, in or about the period May 1998 to March 1999, while engaged as the accountant for Migar Enterprises Ltd., Mountain Card Shop Limited and Mountain Card Shop Holdings Inc. to prepare their tax returns and perform a review of the corporations' financial statements for the year ended February 28, 1998, 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:
 - (a) he did not file tax returns for his clients although he was engaged to do so;
 - (b) he represented to Michael Peck and others that the companies' tax returns for the year ended February 28, 1998 were filed with Revenue Canada when they were not; and
 - (c) he did not promptly return his client's telephone calls inquiring about the status of the tax returns and financial statements.
 2. THAT, the said Robert L. Welsh, in or about the period January 1994 to December 1997, while he was engaged as the accountant for 642474 Ontario Inc., o/a Kenross Foodland to prepare and file the company's tax returns for the three years ended November 30, 1994, 1995 and 1996, 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:
 - (a) he did not file the tax returns although he was engaged to do so;
 - (b) he represented to his clients that the tax returns were filed with Revenue Canada when they were not; and
 - (c) he entered into an agreement with his clients to delay billing them for professional services rendered with the intent of suppressing his income for the purposes of his matrimonial proceedings.

3. THAT, the said Robert L. Welsh, in or about the period May 1997 to July 1998, while he was engaged to prepare financial statements and tax returns for Dr. Richard Casey and 2942542 Canada Inc., 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:
 - (a) he told his client that he filed the corporate tax returns when he had not done so; and
 - (b) he did not prepare the corporate tax returns although he was engaged to do so.
4. THAT, the said Robert L. Welsh, in or about the period May to August 1993, while he was engaged to perform a review of the financial statements of 642474 Ontario Inc., failed to hold himself free of any influence, interest or relationship which impaired his professional judgment or objectivity or which, in the view of a reasonable observer, would impair his professional judgment or objectivity in that he borrowed \$5,000 from the spouses of the shareholders of the company, contrary to Rule 204.2.
5. THAT, the said Robert L. Welsh, in or about the period March 1997 to February 1998, while he was engaged to prepare monthly financial statements for 2942542 Canada Inc., failed to perform his professional services with due care and integrity contrary to Rule 202 of the rules of professional conduct, in that:
 - (a) he did not produce the statements on a timely basis;
 - (b) when he did produce the monthly statements, they were incomplete in that they did not include all revenues and expenses; and
 - (c) the May 1997 statement included an unexplained debit memo of \$200,374.
11. Mr. Welsh entered a plea of guilty to the one charge dated December 16, 1997, and to charge No. 3, as amended, dated October 19, 1999, and confirmed that he knew that on the basis of his plea alone, he could be found guilty of those two charges.
12. Mr. Welsh entered a plea of not guilty to the other charges.

OUTLINE OF THE PROCEEDINGS

13. In presenting her case, counsel for the professional conduct committee filed an agreed statement of facts with respect to the charge made on December 16, 1997, and charge No. 3 made on October 19, 1999. This agreed statement of facts was signed by Ms. McPhadden on behalf of the professional conduct committee and by Mr. Welsh on his own behalf.
14. Counsel for the professional conduct committee outlined the nature of the case alleged against Mr. Welsh, and made reference to the witnesses she proposed to call.
15. With respect to charge No. 1, counsel for the professional conduct committee called Michael Peck, the major shareholder of Migar Enterprises Ltd., Mountain Card Shop Limited and Mountain Card Shop Holdings Inc.; Jason Safar, CA, of PricewaterhouseCoopers, a firm retained subsequent to Mr. Welsh's discharge; and

Andy Yap, CA, who was a shareholder of the above three companies but not active in their management.

16. With respect to charges Nos. 2 and 4, counsel for the professional conduct committee called Conrad Van Viegan, CA, the successor accountant retained by 642474 Ontario Inc., o/a Kenross Foodland; Ken Stevenett, a one-time partner and subsequent full owner of Kenross Foodland; and Mrs. Stevenett.
17. With respect to charges Nos. 3 and 5, counsel for the professional conduct committee called Mark Grunwald, who was engaged by 2942542 Canada Inc., which operated the Male Health Clinic, subsequent to Mr. Welsh's discharge as its accountant. Counsel for the professional conduct committee also called Dr. Richard Casey, the major shareholder and President of the Male Health Clinic, and Joan Graham, the manager of the clinic until her retirement in 1998.
18. The investigator, Michael Cashion, was also called as a witness. His testimony included reference to what Mr. Welsh told him during their meeting of November 24, 1998.
19. Counsel for the member called Penny Melnik, the personal assistant to Mr. Welsh, and Mr. Welsh himself. She also recalled Mr. Cashion, primarily for the purpose of having him file the notes he had taken during his meetings with Mr. Welsh.
20. Mr. Cashion was also called in reply by counsel for the professional conduct committee.

THE APPLICATION TO CALL SIMILAR FACT EVIDENCE

21. At the conclusion of Mr. Cashion's testimony, counsel for the professional conduct committee gave notice that she wished to re-open her case. The disclosure and "will say" statements provided to counsel for the member, and the outline of the prosecution's case given in opening, did not include the evidence of Gerard Davoren who had complained to the Institute about Mr. Welsh. The professional conduct committee had closed the file on Mr. Davoren's complaint without making a charge against Mr. Welsh, before the complaints from Mr. Peck, Dr. Casey and Mr. Stevenett were received.
22. Counsel for the professional conduct committee gave notice to the member six days before the third day of the hearing of the intention to call Mr. Davoren who would give evidence of similar treatment by Mr. Welsh. Ms. McPhadden submitted that Mr. Davoren's evidence should be admitted as it disclosed that Mr. Welsh systematically treated his clients in the way complained about by Mr. Peck, Mr. Stevenett and Dr. Casey.
23. Counsel for the member objected to the evidence on two grounds. The first was that there had been insufficient notice, and the second was that the evidence would be so prejudicial that its probative value could not outweigh the prejudice to Mr. Welsh. As Mr. Welsh had known about the complaint and allegations for many months, we concluded that six days notice was adequate.
24. Both parties agreed that the best way for us to determine whether the probative value of the evidence outweighed its prejudicial effect was to hear the evidence. After hearing the evidence, we ruled it was not admissible. We were not persuaded that the evidence was credible, and accordingly concluded it had no probative value. Thus, it did not form part of the evidence before us, and we did not consider it in reaching our conclusion.

APPLICATION FOR NEW HEARING

25. On the fourth day of the hearing, June 22, 2000, counsel for the member opened her case and called Ms. Melnick and Mr. Welsh as witnesses. The testimony of Ms. Melnick including the cross-examination was completed that day. When the hearing adjourned for the day, Mr. Welsh had not yet finished his examination-in-chief.
26. When the hearing resumed on September 21, 2000, counsel for the professional conduct committee raised as a preliminary matter a concern that the transcript for the third and fourth days of the hearing was not and would not be available. She submitted that the professional conduct committee was prejudiced by the lack of a transcript, and that in particular her cross-examination of Mr. Welsh would be inhibited. It was her position that we should order the hearing to begin again before a different panel of the discipline committee.
27. Counsel for the member opposed this application. While acknowledging it was unfortunate that there was no transcript, it was her position that the prejudice would be minimized by proceeding.
28. We were confident we understood Mr. Welsh's evidence and that the proceedings would not be unfair to either party as a result of the lack of a transcript. Further, we concluded that until a dispute arose as to what Mr. Welsh had said, there might be anxiety about prejudice but there was no actual prejudice. Accordingly, we decided the hearing should continue. Mr. Welsh was cross-examined for much of the fifth day of the hearing, and re-examined on the sixth day of the hearing, September 22, 2000. It turned out that there was no dispute about what he had said on June 22, 2000 which required a transcript to resolve.
29. The evidence concluded on the sixth day of the hearing, September 22, 2000.

DECISION ON THE CHARGES

30. Rather than attempt to summarize all the evidence and submissions, we have set out below the facts which we accept as proven and which are relevant to the various charges. We wish to acknowledge the force with which this case was prosecuted and defended, and the well-prepared submissions of counsel for both parties.
31. In light of the defence which was put forward to charges Nos. 1, 2, 4 and 5, it was necessary for this panel to decide whether to accept the evidence of Mr. Welsh or the evidence of the witnesses called by the professional conduct committee. We had the benefit of seeing the witnesses, and the particular benefit of seeing Mr. Welsh give evidence for many hours. We concluded that Mr. Welsh was not a credible witness. Where his evidence conflicted with the evidence of the witnesses called by the professional conduct committee, we accepted the evidence of those witnesses and not Mr. Welsh.
32. We reached our conclusion based on all the evidence we saw and heard, including the manner in which the witnesses testified, but we wish to refer to three particular matters where Mr. Welsh's lack of credibility was clear:
 - The first of these matters relates to charge No. 2, and the income tax returns which will be apparent from paragraphs 40 to 45 of these reasons.

- In his response to the Institute of June 22, 1998 [Exhibit No. 35], Mr. Welsh flatly denied that Mr. Stevenett was a party to the discussion whereby Mr. Waterworth lent him \$5,000. In fact, as Mr. Welsh acknowledged at the hearing, Mr. Waterworth was out of town when Mr. and Mrs. Stevenett loaned him the \$5,000. Mr. Welsh was not shy in his letter or in his evidence about challenging Mr. Stevenett's veracity without justification.
 - In June, 1998, through his then lawyer Mr. Ellis, as is apparent from Exhibit No. 37, Mr. Welsh took the position he was unable to complete the monthly financial statements for the Male Health Centres as required because of "significant discrepancies between receipts and revenues and the bank statements recording deposits giving rise to growing concerns." It appears Mr. Welsh was unaware until his meeting with Mr. Cashion in November, 1998, when he asked his technician Chris Rowbottam how much money was apparently missing, that the amount was so small in both absolute and relative terms that this reason was at best a feeble excuse.
33. Submissions were made by Mr. Welsh's counsel that his client had some difficulty remembering things, which accounted for a lack of clarity in his evidence. We did not accept this submission. One difficulty with the submission was that in his evidence-in-chief Mr. Welsh had no problem remembering specific facts, and expressed complete confidence on many matters. Under cross-examination he became uncertain or was forced to qualify or withdraw some of his evidence. It was only on re-examination that his counsel elicited evidence that Mr. Welsh sometimes had difficulty recalling facts. The other difficulty with this submission was that we found Mr. Welsh had misled his clients, other chartered accountants, the investigator, and the professional conduct committee, and tried to mislead this committee, and this cannot be explained by a faulty memory.

Charge No. 1

34. Mr. Welsh acknowledged that filing the returns was part of the engagement, and said that he filed the returns on September 10, 1998. Revenue Canada did not acknowledge the returns were filed on that date or at any time by Mr. Welsh. We concluded that Mr. Welsh did not file the tax returns. We also concluded that Mr. Welsh told Mr. Peck, Mr. Yap and Mr. Safar that the returns had been filed on time, which was prior to August 31, 1998, which he knew was not the case.
35. Mr. Peck made numerous telephone calls which were not returned at all by Mr. Welsh, and others which were not returned promptly. Some of the calls were made so soon after previous calls (on the same day) that we considered them one call not several calls, but nevertheless there were many telephone calls which Mr. Welsh should have returned promptly and did not.
36. We found that particulars (a), (b) and (c) of charge No. 1 were proven and that Mr. Welsh's conduct fell below the required standard of the profession. Accordingly, he was found guilty of charge No. 1.

Charge No. 2

37. Mr. Welsh was the accountant for 642474 Ontario Inc., which carried on business as Kenross Foodland for many years. Mr. Welsh was responsible for preparing and filing the tax returns for the three years which ended November 30, 1994, 1995 and 1996. He did not do so but he told his client that he did.

38. Mr. Welsh's failure to file the tax returns and the misrepresentation he made to his client [particulars (a) and (b) of charge No. 2] was conduct which clearly falls short of the required standard and warrants a finding of guilty on charge No. 2.
39. With respect to particular (c) of charge No. 2, we concluded that Mr. Welsh purported to make an agreement with his clients that he would not bill them in order to minimize his income during matrimonial proceedings, and he acknowledged this when he met with Mr. Cashion. The evidence however shows that, while carrying on practice at Nolan, Hoecht & Welsh, accounts were sent. We could not conclude on this evidence that the standard of proof required was met, and accordingly found particular (c) of charge No. 2 not proven.
40. As referred to above, the most troubling evidence with respect to charge No. 2 related to the copies of the income tax returns which were filed. It was common ground that Mr. Welsh gave the copy of the income tax return for 642474 Ontario Inc. for the taxation year ending November 30, 1994, which begins at page 67 of Exhibit No. 5, to Mr. Cashion in November, 1998, as being a copy of the income tax return which he had filed. However, at this hearing Mr. Welsh said that he prepared this tax return only as a "what if" return to show Mr. Stevenett, who was buying out his partner Mr. Waterworth's interest in the business, how he would not have to pay tax, and that this was not a copy of the tax return filed.
41. Mr. Welsh testified that the copy of the income tax return filed as Exhibit No. 23 in this proceeding, which was in another file and not in the room when he met with Mr. Cashion, was a copy of the actual tax return filed for the year ending November 30, 1994. The difficulty with this evidence is that this tax return is incorrect [for one thing there is no provincial tax payable] and it appears that it could only have been created by overriding the computer program to give the "right answer" with respect to the tax payable in light of the financial statements attached to the review engagement report. We concluded this income tax return was prepared to persuade the professional conduct committee that the complaint was groundless, or to persuade the discipline committee that Mr. Welsh was innocent of the charge.
42. Mr. Welsh said in his examination-in-chief that this "what if" return was prepared for discussion with Mr. Stevenett at the time the sale was being concluded in February, 1996. Under cross-examination, Mr. Welsh put the meeting with Mr. Stevenett at a later time, perhaps as late as February, 1997.
43. The income tax return, a copy of which is filed starting at page 67 of Exhibit No. 5, which Mr. Welsh originally said was prepared in February, 1996, and which he said under cross-examination could have been prepared as late as February, 1997, could not have been prepared before July, 1997. Exhibit No. 46 is a letter from the maker of the software, Cantax Income Tax Software, dated August 2, 2000, which makes it clear that the software used to produce the form in Exhibit No. 5, page 67 was not released until July 16, 1997. It appeared this return was prepared for the meeting with Mr. Cashion in November, 1998.
44. Counsel for Mr. Welsh, in her submissions, suggested that the sale of Mr. Waterworth's interest to Mr. Stevenett did not proceed as a normal sale or with a real closing, and that accordingly it was possible that Mr. Welsh had prepared this tax return to explain the tax position to Mr. Stevenett subsequent to July, 1997.

45. Even if there had been evidence to support counsel's submissions, on the evidence we heard, with the benefit of seeing Mr. Welsh give evidence for many hours, we concluded that Mr. Welsh had misled Mr. Cashion and the professional conduct committee, and had attempted to mislead the discipline committee.

Charge No. 3

46. Mr. Welsh entered a plea of guilty to charge No. 3. The agreed statement of facts which he signed, as well as the evidence presented by Dr. Casey and Ms. Graham, and Mr. Welsh's own admissions while giving evidence, made it clear that he was guilty of charge No. 3.

Charge No. 4

47. There was no disagreement about the facts relevant to charge No. 4. Mr. Welsh borrowed \$5,000 in May, 1993 and repaid it in August, 1993. The defence was that a reasonable observer, looking at this loan of a small amount of money for a short period of time after the review engagement report was finished, and repaid prior to the beginning of work for the next year-end, would conclude that Mr. Welsh's objectivity had not been impaired.
48. Mr. Welsh was engaged by the client throughout the period of the loan, and accordingly the objectivity standard precluded him from borrowing the money. His then partners recognized that it was wrong for him to borrow the money, as would any objective observer. Mr. Welsh clearly breached a fundamental requirement of the profession, and he was found guilty of the charge.

Charge No. 5

49. The standard of proof before the discipline committee is not the criminal standard of proof beyond a reasonable doubt. But the evidence must do more than persuade the panel hearing the case that on a balance of probabilities it is more likely that the allegation is true than that it is not true. The discipline committee only makes findings of fact where there is clear and cogent evidence to support those findings. The more serious the consequences, the more convinced a panel of the discipline committee hearing a case must be that the evidence proves the allegations are true.
50. With respect to charge No. 5, the evidence fell short of the standard of proof required. It was clear Mr. Welsh's original explanation for the delay in completing the work, unexplained differences between receipts and deposits, was untenable. It was also clear Mr. Welsh did not perform his services in an exemplary fashion. But the circumstances were difficult, and there is evidence that he did not have all the information he needed to complete the statements in a timely manner. The reason for not having the information was more likely Mr. Welsh's own delay in asking for it than inaction by Ms. Graham, but we were not convinced his work in this instance fell far enough below the required standard as to warrant a finding of guilty on the charge. Accordingly, Mr. Welsh was found not guilty.

The charge dated December 16, 1997

51. The plea of guilty was fully justified by the admissions set out in the agreed statement of facts. Mr. Welsh's letters, found at Tab 5 of Exhibit No. 5, and his evidence, clearly disclosed that he deliberately and knowingly continued to practice public accounting under the firm name "Welsh & Company" in violation for Rule 403.
52. The word intractable seems the appropriate word to describe Mr. Welsh's conduct with respect to this charge. He acknowledged in a letter of May, 1997 that "I was not, and am not, currently in strict compliance of the Rule." But despite the fact that the professional conduct committee gave Mr. Welsh many months to complete the partnership agreement he said he was negotiating, and to come into compliance with the rule, he did not do so.
53. Mr. Welsh wrote in October, 1997 that he would voluntarily revert to the use of his personal name if he had not completed the partnership agreement by December 1, 1997. Not only did he not keep his word by December 1, 1997, but he continued to knowingly violate Rule 403 after the charge was made on December 16, 1997, and even after the assignment hearing of January 28, 1998, which set a date for the originally-scheduled hearing of this charge, which was May 14, 1998.
54. The decision was made known to Mr. Welsh at the hearing on November 10, 2000, and the written decision and order was sent to him on November 24. The decision reads as follows:

DECISION

THAT, having seen, heard and considered the evidence relating to the charge dated December 16, 1997, including the agreed statement of facts, filed, and having heard the plea of guilty to the charge, the Discipline Committee finds Robert Lloyd Welsh guilty of the charge.

AND THAT, having seen, heard and considered the evidence relating to the charges dated October 19, 1999, including the agreed statement of facts, filed, charge No. 6 having been withdrawn, and particular (a) of charge No. 3 having been amended, and having heard the plea of guilty to charge No. 3 as amended, the Discipline Committee finds Robert Lloyd Welsh not guilty of charge No. 5, and guilty of charges Nos. 1, 2, 3 as amended, and 4.

ORDER AS TO SANCTION

55. The professional conduct committee did not call evidence with respect to sanction.
56. On October 12, counsel for Mr. Welsh called Mr. David Galloway, CA, and Mr. William Thompson, CA, who testified on Mr. Welsh's behalf with respect to his character and his competence as a chartered accountant. Both men outlined their experience as chartered accountants, and expressed a willingness to assist Mr. Welsh in his practice in the event he should be suspended. Mr. Galloway in particular said he would give whatever time is necessary to ensure that Mr. Welsh's practice continues so that he can resume it when his suspension ends.
57. The hearing resumed on November 10 when counsel for the member called Dr. Traub-Warner, a psychiatrist with a speciality in psychoanalysis, to give evidence on Mr. Welsh's behalf. Dr. Traub-Warner's report dated June 19, 2000, was filed as an exhibit. The doctor's diagnosis was that Mr. Welsh suffered an anxiety disorder and mood disorder between 1994 and 1998, which resulted in a lack of diligence which is not likely to recur. According to Dr. Traub-Warner, Mr. Welsh had a diminished attention span, an

inability to concentrate and memory lapses, which accounted for the distinctly different and poorer performance of his professional services between 1994 and 1998 than prior to 1994.

58. Dr. Traub-Warner testified that he performed a thorough evaluation of Mr. Welsh's character and mental state over six hours of examination, and that he based his diagnosis and conclusions on what he learned from Mr. Welsh during those six hours. As all the factual information on which Dr. Traub-Warner based his conclusions and diagnosis came from Mr. Welsh, who testified for most of two days and whom we found was not a credible witness, we were unable to put weight on the doctor's evidence.
59. Moreover, while an anxiety disorder and mood disorder might explain the lack of diligence and inability to recall details, it does not explain or excuse the pattern of misconduct and misrepresentations to clients and other chartered accountants which we found characterized Mr. Welsh's behaviour.
60. Dr. Traub-Warner was unable to say when in 1998 Mr. Welsh recovered. As part of the conduct giving rise to this hearing occurred in late August and September, 1998, and as Mr. Welsh's meeting with Mr. Cashion was on November 24, 1998, even if we had found we could put weight on Dr. Traub-Warner's evidence, it would not have been very helpful.
61. In Dr. Traub-Warner's oral evidence he said he was not certain that Mr. Welsh had recovered from his anxiety-related illness, that Mr. Welsh will not admit to himself that he is an anxious man, even a scared man, and that he still "clams up". Perhaps this might help explain why Mr. Welsh would not acknowledge a problem with his work unless, as in the case of the charge dated December 16, 1997 or charge No. 3, he had no alternative. Whether this is the explanation or not, the failure or refusal to recognize his mistakes does raise questions about his ability to practise.
62. Dr. Traub-Warner also testified that he had concerns about Mr. Welsh's health in the event he was expelled from the Institute and had no hope of recovering his designation and professional identity.
63. The sanction sought by the professional conduct committee was a reprimand, a fine in the range of \$5,000 to \$10,000, a suspension for two years, and notice disclosing Mr. Welsh's name in *CheckMark* as well as to the Public Accountants Council and the Canadian Institute of Chartered Accountants. Counsel for Mr. Welsh did not take issue with the suggested reprimand or notice, but submitted that a fine should be at the lower end of the range, and that a suspension should be in the order of three to six months.
64. We concluded that the three principles which govern the imposition of a sanction, general deterrence, specific deterrence and rehabilitation, were all important in this case.
65. The order must be a sufficient general and specific deterrent. The profession as a whole must know that similar misconduct will not be tolerated. The sanction must also specifically deter Mr. Welsh from similar conduct in the future in an effort to ensure his rehabilitation.
66. In light of the fact that we found Mr. Welsh had misled his clients, other chartered accountants, the investigator, and the professional conduct committee, and had tried to mislead this panel; and that he had blatantly and knowingly disregarded Rule 403 for

many months; there was a serious question as to whether Mr. Welsh could be rehabilitated and whether he was governable.

67. The majority of the panel concluded that a two-year suspension and a \$10,000 fine for a sole practitioner was a significant specific deterrent to prompt Mr. Welsh's rehabilitation, and was a substantial general deterrent. The majority concluded that his designation must be important to Mr. Welsh or he would not have defended the case as he did, and further, that perhaps Dr. Traub-Warner was right and Mr. Welsh's designation is so important that its loss would affect his health. Accordingly, the majority concluded Mr. Welsh will do what is necessary to rehabilitate himself so that he can remain a member of the profession and practise within the discipline of the profession, which we think is in the public interest. The principle of sanctioning which the majority accepted as of paramount importance in this case was rehabilitation.
68. One member of the committee, the public representative, thought that expulsion was the more appropriate order. In her view, Mr. Welsh had demonstrated by the conduct which led to the charges and by his conduct at this hearing that he was unable or unwilling either to be governed or to tell the truth. Accordingly, in the view of this member of the panel, rehabilitation in the interests of the member and the public, while desirable, was unrealistic, and there was not sufficient reason to think Mr. Welsh deserved the opportunity.
69. When we concluded our deliberations on November 10, we recalled the parties and advised them of the terms of the order. Those terms, as set out in the written decision and order which Mr. Welsh has received, read as follows:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Welsh be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Welsh be and he is hereby fined the sum of \$10,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Welsh be suspended from the rights and privileges of membership in the Institute for a period of two (2) years from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Welsh'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
 - (d) by publication in *CheckMark*.
5. THAT Mr. Welsh 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.
6. THAT in the event Mr. Welsh fails to comply with any requirement 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 above and in *The Hamilton Spectator*.

Reprimand

70. The reprimand is intended as a specific deterrent to Mr. Welsh.

Fine and Suspension

71. As set out above, the fine and suspension are intended to be a specific deterrent to Mr. Welsh and to prompt his rehabilitation, and to be a general deterrent to other members.

Notice

72. Notice disclosing Mr. Welsh's name is necessary in the interest of general deterrence, as it is important that members know that their names will be published in notices given to the profession.

Surrender of Certificate

73. It is important that Mr. Welsh not purport to enjoy the privileges of membership while he is suspended, and according he is to surrender his certificate.

DATED AT TORONTO THIS 27TH DAY OF MARCH, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

L.P. BOOKMAN, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

H. B. BERNSTEIN, CA
B. M. BYRNE, CA
D. M. FORTNUM, CA
B. RAMSAY (Public representative)