

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

Robert Lloyd Welsh, of Hamilton, was found guilty of one charge under Rule 101 of practising or holding himself out as a chartered accountant when his rights and privileges were suspended, in contravention of Bylaw 106(5); one charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest; and one charge under Rule 203.2 of failing to cooperate in a professional conduct committee investigation. Mr. Welsh continued to practise and hold himself out as a chartered accountant after being suspended for professional misconduct by a previous order of the discipline committee made against him on November 10, 2000. He also continued to act as a public accountant and signed an audit report at a time when he knew that he was no longer licensed to do so. He failed to cooperate in the professional conduct committee's investigation, and failed to attend his discipline committee hearing. Mr. Welsh was fined \$15,000, and expelled from the Institute.

CHARGE(S) LAID re Robert Lloyd Welsh

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

1. THAT the said Robert L. Welsh, in or about the period May 9, 2001 to August 30, 2001, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest, in that he acted as a public accountant and signed an audit report at a time when he knew that he was not licensed to do so, contrary to Rule 201.1 of the rules of professional conduct.
2. THAT the said Robert L. Welsh, in or about the period December 31, 2000 to September 30, 2001, practiced or held himself out as a chartered accountant when his rights and privileges as a member were suspended, and did thereby contravene the provisions of Bylaw 106(5), contrary to Rule 101 of the rules of professional conduct.
3. THAT the said Robert L. Welsh, in or about the period December 6, 2001 to April 3, 2002, failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct an investigation on behalf of the professional conduct committee, contrary to Rule 203.3 of the rules of professional conduct.

Dated at Toronto, Ontario this 9th day of April, 2002.

G.W. MILLS, CA - DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Robert Lloyd Welsh

DECISION AND ORDER IN THE MATTER OF: Charges against **ROBERT LLOYD WELSH**, a suspended member of the Institute, under **Rules 101, 201.1 and 203.2(b)** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE SEPTEMBER 25, 2002

DECISION

THAT, having seen, heard and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Welsh pursuant to Institute Bylaw 560, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to charges No. 1, 2 and 3, the Discipline Committee finds Robert Lloyd Welsh guilty of charges Nos. 1, 2 and 3.

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 \$15,000, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Welsh be and he is hereby expelled from membership in the Institute.
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;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in *The Hamilton Spectator* and *The Globe and Mail*.

DATED AT TORONTO THIS 30TH DAY OF SEPTEMBER, 2002
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**, a suspended member of the Institute, under **Rules 101, 201.1 and 203.2(b)** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE SEPTEMBER 25, 2002

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on September 25, 2002 to hear the charges brought by the professional conduct committee against Mr. Robert Lloyd Welsh, a suspended member of the Institute.
2. Ms. Barbara Glendinning represented the professional conduct committee. She was accompanied by the investigator appointed by the professional conduct committee, Mr. Bruce Armstrong.

PROCEEDING IN THE ABSENCE OF THE MEMBER

3. When the hearing was called to order, the member did not appear. The secretary to the discipline committee checked the common areas of the building adjacent to the Council Chamber and reported that Mr. Welsh was not present. Ms. Glendinning indicated that she had not heard from Mr. Welsh, nor from anyone acting on his behalf.
4. The notice of assignment hearing and related documents; the transcript of the assignment hearing of June 26, 2002, which Mr. Welsh attended and at which the hearing dates of September 25 and 26, 2002 were chosen; the notice of hearing with Mr. Welsh's signed acknowledgement of receipt; and the charges dated April 9, 2002 were marked as Exhibits 1, 2, 3 and 4, respectively.
5. Counsel to the discipline committee reviewed the documents filed. He advised that there was evidence on which the panel could conclude that Mr. Welsh had been properly served, thus enabling it to proceed with the hearing, but that whether the panel decided to accept the evidence and proceed was a decision the panel had to make. Upon deliberation, the panel concluded that it would proceed with the hearing pursuant to Bylaw 560.

DECISION ON THE CHARGES

6. The charges against Mr. Welsh read as follows:
 1. THAT the said Robert L. Welsh, in or about the period May 9, 2001 to August 30, 2001, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest, in that he acted as a public accountant and signed an audit report at a time when he knew that he was not licensed to do so, contrary to Rule 201.1 of the rules of professional conduct.

2. THAT the said Robert L. Welsh, in or about the period December 31, 2000 to September 30, 2001, practiced or held himself out as a chartered accountant when his rights and privileges as a member were suspended, and did thereby contravene the provisions of Bylaw 106(5), contrary to Rule 101 of the rules of professional conduct.
 3. THAT the said Robert L. Welsh, in or about the period December 6, 2001 to April 3, 2002, failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct an investigation on behalf of the professional conduct committee, contrary to Rule 203.2(b) of the rules of professional conduct.
7. A plea of not guilty was entered on the record on behalf of Mr. Welsh, and Ms. Glendinning was asked to present the case for the professional conduct committee.
8. Ms. Glendinning filed a document brief and outlined the case for the professional conduct committee. Thereafter she called Mr. Scott Cowan, a member of the Bruce Trail Association. Mr. Cowan was the treasurer of the Bruce Trail Association at the time Mr. Welsh signed the audit report referred in charge No. 1, and was at the time of the hearing a member of the association's finance committee.
9. Mr. Cowan testified that as treasurer he was responsible for nominating the person to serve as the association's auditor for the ensuing year. In September 2001, Mr. Welsh attended the annual meeting of the Bruce Trail Association and presented the financial statements and his audit report for the year ended July 31, 2001. He also accepted the appointment as auditor for the ensuing year. He represented himself as a chartered accountant, and his report was presented on his chartered accountant letterhead.
10. Mr. Welsh had been the auditor of the Bruce Trail Association for at least fifteen years, and was well liked and respected by the members of the association. Mr. Cowan testified that in November 2000 he heard a rumour from some members of the association that Mr. Welsh had made an assignment in bankruptcy. Though he did not personally speak with Mr. Welsh about the matter, Mr. Cowan had direct knowledge that the issue was raised with Mr. Welsh by the executive director of the association, who reported Mr. Welsh's explanation as being that the rumour of his bankruptcy was false. Mr. Welsh continued as the auditor for the association.
11. After Mr. Welsh delivered the audit report in September 2001, and accepted the audit engagement for the year ending July 31, 2002, a member of the Bruce Trail Association read in *CheckMark* that Mr. Welsh had been suspended from membership in the Institute by order of the Institute's discipline committee after finding Mr. Welsh guilty of professional misconduct. There were further discussions with Mr. Welsh, and ultimately the Bruce Trail Association engaged another chartered accountant as its auditor.
12. Mr. Armstrong testified as to the efforts he made to arrange a meeting with Mr. Welsh, and as to the fact that he was never able to arrange the meeting.

13. After hearing the evidence and submissions of the professional conduct committee, the panel deliberated and concluded that the charges had been proven and that Mr. Welsh was guilty of professional misconduct.

14. When the hearing resumed, the chair read the following decision into the record:

DECISION

THAT, having seen, heard and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Welsh pursuant to Institute Bylaw 560, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to charges Nos. 1, 2 and 3, the Discipline Committee finds Robert Lloyd Welsh guilty of charges Nos. 1, 2 and 3.

ORDER AS TO SANCTION

15. On behalf of the professional conduct committee, Ms. Glendinning requested an order which included a reprimand from the chair, a fine in the range of \$5,000-\$7,000, and expulsion from the Institute with notice to the Public Accountants Council and the CICA, to the profession by way of publication in *CheckMark*, and to the public by way of publication in *The Hamilton Spectator* and *The Globe and Mail*.

16. After deliberations, the hearing was called to order and the chair outlined the terms of the order made by the panel. The formal order as set out in the decision and order dated and sent to Mr. Welsh on September 30, 2002 reads:

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 \$15,000, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Welsh be and he is hereby expelled from membership in the Institute.
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;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in *The Hamilton Spectator* and *The Globe and Mail*.

Reprimand and Expulsion

17. On November 10, 2000, after an eight day hearing at which Mr. Welsh was present, the discipline committee found him guilty of professional misconduct and imposed a two year suspension. The reasons of the discipline committee were issued on March 27, 2001. There was no appeal, and Mr. Welsh was suspended for a two year period commencing on May 8, 2001. He knew he was suspended when he delivered his audit report for the Bruce Trail Association for the year ended July 31, 2001 as a chartered accountant. He also knew at that time that he was not entitled to accept audit engagements, because he had previously been advised by the Public Accountants Council that his licence to practise public accounting in Ontario had been revoked.

18. The public representative member of the discipline committee panel that heard the case against Mr. Welsh in 2000 dissented on the issue of a two year suspension and would have expelled Mr. Welsh as ungovernable at that time. Despite the benefit of the doubt given to him by the majority of the panel at that hearing, Mr. Welsh proceeded to ignore the panel's order, which was intended to help rehabilitate him as well as specifically deter him from inappropriate conduct in future. This panel concluded that Mr. Welsh was indeed ungovernable, and that he had to be expelled. He ought not to continue to be allowed to represent to the public that he conducts himself within the discipline of the CA profession. We agreed that he also required a reprimand, notwithstanding that he may ignore it as he ignored the previous discipline committee order.

Fine

19. It was not apparent to the panel why Mr. Welsh should only be fined an amount of \$5,000 to \$7,000, as requested by the professional conduct committee. While his conduct did not constitute moral turpitude in the usual sense, his conduct showed a determined and calculated disregard for his obligation to conduct himself within the discipline of the profession. He previously failed to comply with an order of the discipline committee. His misconduct affected members of the public, and in particular the Bruce Trail Association. He falsely represented himself to the association as a chartered accountant at a time when he knew he was under suspension from membership, and accepted an audit engagement when he knew he was no longer licensed to practise public accounting. He did this at a meeting of the association, virtually looking members of his client in the eye and misleading them to their detriment.

20. Mr. Welsh deserves expulsion, but in addition his misconduct requires a substantial fine, both as a specific deterrent to him, and as a general deterrent to any other like-minded members of the profession. We determined that a fine of \$15,000 payable within 12 months was appropriate.

Notice

21. It is apparent that Mr. Welsh cannot be relied upon to tell members of the public that he is no longer a chartered accountant. Accordingly, we ordered that notice be given in *The Hamilton Spectator* and *The Globe and Mail* in order to inform the public that he has been expelled. His name will also be disclosed in the notice to be published in *CheckMark*, as a general deterrent to other members.

DATED AT TORONTO THIS 10TH DAY OF DECEMBER, 2002
BY ORDER OF THE DISCIPLINE COMMITTEE

B.A. TANNENBAUM, FCA – DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

E.R. ARCHIBALD
J.A. CULLEMORE, CA
P.A. GOGGINS, CA
B. YOUNG (Public representative)

APPEAL COMMITTEE re Robert Lloyd Welsh

DECISION AND REASONS FOR THE DECISION IN THE MATTER OF: An appeal by **ROBERT LLOYD WELSH**, a suspended member of the Institute, of the Order of the Discipline Committee made on September 25, 2002, pursuant to the bylaws of the Institute, as amended.

DECISION AND REASONS FOR THE DECISION MADE NOVEMBER 7, 2003

1. This appeal was heard by the appeal committee of the Institute of Chartered Accountants of Ontario on May 15 and November 7, 2003. It was an appeal brought by Mr. Robert Welsh against the decision and order of the discipline committee made against him on September 25, 2002.
2. Ms. Barbara Glendinning appeared on behalf of the professional conduct committee. On May 15, 2003, Ms. Lisa La Horey appeared as counsel for and with Mr. Welsh. On September 25, Ms. LaHorey advised that she was no longer acting for Mr. Welsh. On October 1, the appeal committee conducted an assignment hearing for the purpose of choosing a date for the continuation of the appeal, at which neither Mr. Welsh nor anyone on his behalf appeared. November 7 was the date chosen for the resumption of the matter, and again neither Mr. Welsh nor anyone on his behalf was present.
3. On September 25, 2002, the discipline committee found Mr. Welsh guilty of three charges of professional misconduct under Rules 101, 201.1 and 203.2(b), and made the following order:

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 \$15,000, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Welsh be and he is hereby expelled from membership in the Institute.
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;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in *The Hamilton Spectator* and *The Globe and Mail*.

4. The relief sought by Mr. Welsh in his Notice of Appeal letter was for:

- the reduction of the fine from \$15,000 to \$2,500;
- the withdrawal of the order of expulsion; and
- the withdrawal of the order for newspaper publication.

HEARING ON MAY 15, 2003 – ISSUE OF ADMISSION OF FRESH EVIDENCE ON APPEAL

5. At the outset of the hearing on May 15, 2003, Ms. La Horey advised that she had intended to call Mr. Welsh as a witness in order to address certain issues, but that Ms. Glendinning had indicated to her that the professional conduct committee would take the position that she was not entitled to lead any new evidence on the appeal. She also stated that Ms. Glendinning had made her aware of the recent appeal committee case of *Peter T. Bogart*, which had dealt directly with the issue of the admission of fresh evidence on an appeal, but for which reasons had not yet been issued. She stated her concern that while Ms. Glendinning and some of the panel members might be aware of the *Bogart* case, she herself had no knowledge of it, thereby placing her and those panel members not familiar with the case in a difficult and untenable position. She requested as a result that Mr. Welsh's appeal be adjourned until the reasons in the *Bogart* appeal had been issued.

6. Ms. Glendinning stated that the professional conduct committee opposed the application for an adjournment. She submitted that the law on the issue of the admission of fresh evidence on an appeal had been settled law in Canada since the 1979 Supreme Court of Canada decision in *R. v. Palmer*, subsequently addressed again by the court in its 2000 decision in *R. v. Levesque*. She said that the law on the issue was therefore not new, that Ms. LaHorey must be deemed to have been aware of it, and that a formal application for the admission of fresh evidence should have been brought.

7. After Mr. Scott, counsel to the appeal committee, asked Ms. La Horey a number of questions concerning her intention to call Mr. Welsh as a witness, the panel deliberated upon the request for an adjournment, which it ultimately granted on the understanding and agreement of both counsel that the panel was not seized of the matter, and that upon the resumption of the hearing the panel may be differently constituted.

8. The panel's formal order on the adjournment request reads as follows:

ORDER

HAVING heard and considered the submissions made on behalf of Robert Lloyd Welsh, and on behalf of the professional conduct committee, upon Mr. Welsh's request for an adjournment of his appeal, the Appeal Committee orders as follows:

1. Mr. Welsh's appeal is adjourned to a date to be set by the appeal committee as soon as reasonably practicable following the committee's release of its reasons in the appeal of Mr. Peter T. Bogart completed on April 29, 2003.

2. Mr. Welsh is and shall remain suspended from the rights and privileges of membership in the Institute until the final determination of his appeal, and shall not, during the period of his suspension, practise or hold himself out as a chartered accountant.
3. With the concurrence of the parties, the appeal committee panel today hearing Mr. Welsh's application for adjournment is not seized of this appeal, and a differently constituted panel of the appeal committee may hear and determine the appeal upon its resumption.
4. This appeal shall resume at the direction of the chair of the appeal committee, and shall proceed expeditiously upon the timetable and conditions established by the chair.
5. The determination of costs associated with today's application for adjournment is reserved to the appeal committee panel which hears and decides Mr. Welsh's appeal when it determines the issue of costs of the appeal.

HEARING ON NOVEMBER 7, 2003 – PROCEEDING IN THE ABSENCE OF THE MEMBER

9. On November 7, 2003, the appeal committee reconvened with three of the original panel members and two new members not in attendance on May 15, 2003.
10. When the hearing was called to order, the member did not appear. The secretary to the appeal committee checked the common areas of the building adjacent to the Council Chamber and reported that Mr. Welsh was not present. Ms. Glendinning indicated that she had not heard from Mr. Welsh, nor from anyone acting on his behalf.
11. The November 7 hearing date had been chosen at the discipline committee assignment hearing held on October 1, 2003, which Mr. Welsh had failed to attend. The chair at the assignment hearing declared that he was satisfied by the affidavit of service of notice of the assignment hearing that Mr. Welsh had been given proper notice of the assignment hearing, and so proceeded to set the November 7 hearing date. As again Mr. Welsh was not in attendance on November 7, an affidavit of service of the notice of hearing was filed.
12. Counsel to the appeal committee reviewed the affidavits of service filed. He advised that there was evidence on which the panel could conclude that Mr. Welsh had been properly served, thus enabling it to proceed with the hearing, but that before proceeding the panel had to specifically address and reach a conclusion on the notice issue. Upon deliberation, the panel concluded that proper notice of the hearing had been given to Mr. Welsh, and that it was going to proceed with the hearing in his absence pursuant to Bylaw 616.

PANEL'S DETERMINATION ON THE APPEAL

13. Ms. Glendinning submitted that in accordance with Bylaw 616, Mr. Welsh's appeal should be dismissed as an abandoned appeal. The bylaw reads as follows:

616 Absence from hearing

The parties to a hearing shall attend at the time and place appointed for the hearing and if a party does not attend at the hearing the appeal committee may proceed in the party's absence and the party will not be entitled to any further notice in the proceedings. If the appellant or applicant is absent from the hearing, the appeal committee may dismiss the appeal as an abandoned appeal, or dismiss the application for review as an abandoned application, as the case may be.

14. Ms. Glendinning also stated that the professional conduct committee was asking for costs to be awarded in respect of both the May 15 and November 7 hearing dates. She pointed out that Mr. Welsh had been present with counsel on May 15, that the hearing had been adjourned that day at Mr. Welsh's request pending the release of the reasons in *Bogart*, that those reasons had been sent to Mr. Welsh prior to the October 1 assignment hearing, and that Mr. Welsh had failed to attend both the assignment hearing and today's hearing. She indicated that she had spoken to Mr. Welsh after the assignment hearing, and that he had informed her that he was aware of the November 7 hearing and was planning to attend and represent himself at the hearing. She reminded the panel that this was Mr. Welsh's appeal, and submitted that he had deliberately chosen not to attend.

15. Upon deliberation, the panel concluded that there had indeed been an onus on Mr. Welsh to appear upon the continuation of his appeal, and that by failing to attend he had effectively made the conscious decision to discontinue the matter. His appeal was therefore dismissed as an abandoned appeal pursuant to Bylaw 616.

COSTS

16. Ms. Glendinning requested that costs be charged against Mr. Welsh, and cited Section 8(1)(h) of *The Chartered Accountants Act, 1956* as the legislative authority for the appeal committee to do so. She next referred to Bylaw 601(6), which grants to the appeal committee all the powers conferred on the discipline committee, and then to Bylaw 530(3)(c), which grants to the discipline committee the power to levy costs. Ms. Glendinning also referred to the Institute Council's policy statement on costs.

17. Counsel to the appeal committee questioned Ms. Glendinning as to whether Section 8(1)(h) of the *CA Act* did, in fact, permit the appeal committee to levy costs. While acknowledging that Section 8(1)(g)(ii) clearly gives the discipline committee the authority to impose costs, Mr. Scott opined that it was not so clear that such power extended to the appeal committee pursuant to Section 8(1)(h). Regardless of any powers conferred in the bylaws, the appeal committee could not make costs awards in the absence of legislative authority.

18. As Mr. Welsh was not present, the panel was without the benefit of hearing submissions from opposing parties on the issue of its authority to award costs. As a result, in light of the uncertainty raised about its jurisdiction, the panel concluded that it could not order costs, even though this case was otherwise an obvious example of one in which costs should be ordered against the appellant. In the absence of full submissions from both the professional conduct committee and the defence, the panel did not consider itself to be properly equipped to decide the law on the issue, and so left the determination to a future panel of the appeal committee.

THE PANEL'S ORDER

19. In the result, at the conclusion of the hearing on November 7, 2003, the order of the appeal committee was that Mr. Welsh's appeal of the decision and order of the discipline committee made on September 25, 2002 be dismissed as an abandoned appeal, without costs.

DATED AT TORONTO, THIS 23RD DAY OF DECEMBER, 2003
BY ORDER OF THE APPEAL COMMITTEE

P.B.A. CLARKSON, CA – PANEL CHAIR
THE APPEAL COMMITTEE

MEMBERS OF THE PANEL:

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