

## **Russell Gordon Oliver: Summary, as Published in *CheckMark***

**R. Gordon Oliver**, of Scarborough, was found guilty of two charges under Rule 104 of failing to respond to letters from the Institute's standards enforcement area in respect of a matter of professional conduct. Mr. Oliver also failed to attend two discipline committee assignment hearings and when the formal hearing of the charges made against him had been adjourned at his request, on his assurance that he would attend, he did not attend. Mr. Oliver was fined \$5,000, charged costs of \$3,200, and expelled from the Institute.

## **CHARGE(S) LAID re Russell Gordon Oliver**

The Professional Conduct Committee hereby makes the following charge against R. Gordon Oliver, a suspended member of the Institute:

1. THAT the said R. Gordon Oliver, in or about the period November 12, 2002 to December 17, 2002, failed to promptly reply in writing to a letter from the Institute dated and sent October 23, 2002 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.
2. THAT the said R. Gordon Oliver, in or about the period January 10, 2003 to January 24, 2003, failed to promptly reply in writing to a letter from the Institute dated January 2, 2003 and delivered January 10, 2003 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

Dated at Windsor, Ontario this 31st day of January 2003.

D. D. MELOCHE - DEPUTY CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

## **DISCIPLINE COMMITTEE re Russell Gordon Oliver**

**DECISION AND ORDER IN THE MATTER OF:** Charges against **RUSSELL GORDON OLIVER**, a suspended member of the Institute, under **Rule 104** of the Rules of Professional Conduct, as amended.

**DECISION AND ORDER MADE JUNE 23, 2003**

### **DECISION**

THAT, having seen, heard and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Oliver, pursuant to 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 and 2, the Discipline Committee finds Russell Gordon Oliver guilty of charges Nos. 1 and 2.

### **ORDER**

IT IS ORDERED in respect of the charges:

1. THAT Mr. Oliver be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Oliver be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Oliver be and he is hereby charged costs fixed at \$3,200, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Oliver be and he is hereby expelled from membership in the Institute.
5. THAT notice of this Decision and Order, disclosing Mr. Oliver's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
  - (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 *Toronto Star* and the *Barrie Examiner*.

6. THAT Mr. Oliver 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 26TH DAY OF JUNE, 2003  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

## **DISCIPLINE COMMITTEE re Russell Gordon Oliver**

**REASONS FOR DECISION AND ORDER IN THE MATTER OF:** Charges against **RUSSELL GORDON OLIVER**, a suspended member of the Institute, under **Rule 104** of the Rules of Professional Conduct, as amended.

### **REASONS FOR THE DECISION AND ORDER MADE JUNE 23, 2003**

1. This panel of the discipline committee of the Institute of the Chartered Accountants of Ontario convened on June 23, 2003, to hear charges brought by the professional conduct committee against Mr. Russell Gordon Oliver, a suspended member of the Institute.
2. The professional conduct committee was represented by Ms. Barbara Glendinning, who was accompanied by Ms. Alison Thomas, an associate director of standards enforcement during the time relevant to the charges. Mr. Oliver was not present.
3. The formal decision and order made on June 23 was signed by the committee secretary and sent to the parties on June 26. These reasons, given pursuant to Bylaw 574, include the charges, the decision, and the order as well as the reasons of the discipline committee.

### **PROCEEDING IN THE ABSENCE OF THE MEMBER**

4. Following a search, the committee secretary advised the chair that Mr. Oliver was not present in any of the public areas adjacent to the hearing room.
5. The chair reviewed the documents which had been filed at the assignment hearings of March 26 and May 6, 2003. At the March 26 assignment hearing, the chair of the discipline committee directed that the hearing proceed on May 6, and that notice of the hearing be served on Mr. Oliver at 10 – 3430 Kingston Road, Scarborough, Ontario, M1M 1R5.
6. By letter dated April 24, 2003, Mr. Oliver wrote to the secretary of the discipline committee advising that he would be out of the country and unable to attend the hearing on May 6, but that if it were rescheduled to any day after June 14 he would attend. This letter was marked as an exhibit at the assignment hearing held on May 6, at which the hearing was rescheduled for June 23.
7. Filed as Exhibit 4 at the hearing was an affidavit of service sworn by Ms. Diane Williamson, coordinator in the registrar's area of the Institute responsible for the administration of the discipline committee. Ms. Williamson deposed that on May 6, 2003, she telephoned Mr. Oliver and left a message on his voicemail advising him that the discipline hearing had been scheduled for June 23, 2003. She further deposed that Mr. Oliver returned her call that day, said he would be available to attend the discipline hearing on June 23, 2003, and asked that the notice of the hearing be mailed to 40-1110 Finch Avenue West, Suite 1218, North York, Ontario M3J 3M2. Her affidavit stated that she mailed the notice as requested and that it was not returned undelivered by the post office.

8. The panel concluded that Mr. Oliver had received proper notice of the hearing, which had been rescheduled to this date at his request, and decided to proceed with the hearing in his absence pursuant to Bylaw 560.

### **DECISION ON THE CHARGES**

9. The charges laid by the professional conduct committee against Mr. Oliver dated January 31, 2003, read as follows:

1. THAT the said R. Gordon Oliver, in or about the period November 12, 2002 to December 17, 2002, failed to promptly reply in writing to a letter from the Institute dated and sent October 23, 2002 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.
2. THAT the said R. Gordon Oliver, in or about the period January 10, 2003 to January 24, 2003, failed to promptly reply in writing to a letter from the Institute dated January 2, 2003 and delivered January 10, 2003 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

10. The chair directed that a plea of not guilty be entered to both charges on Mr. Oliver's behalf.

11. Ms. Glendinning called Ms. Thomas who testified regarding efforts to correspond with Mr. Oliver in Barrie, and later in Scarborough. Ms. Glendinning also filed a document brief which Ms. Thomas referred to in her evidence. The relevant facts, as we found them to be, can be succinctly stated.

12. Ms. Joanna Maund, the Institute's director of standards enforcement, wrote to Mr. Oliver by letter dated October 23, 2002, requesting his reply by November 12, 2002 to a complaint that had been made against him.

13. Ms. Thomas testified that as an earlier letter sent to Mr. Oliver's Barrie address had been returned with the notation "Moved to 10-3430 Kingston Road, Scarborough, Ontario M1M 1R5", the October 23 letter from Ms. Maund was sent to the Kingston Road address, by both registered and regular prepaid mail. The letter sent by registered mail was not picked up and was returned to the Institute. The letter sent by regular prepaid mail was not returned to the Institute.

14. As no reply was received to Ms. Maund's letter, Ms. Glendinning wrote to Mr. Oliver on January 2, 2003, requesting a response from him by not later than January 24, 2003.

15. As attested by filed affidavits, Ms. Glendinning's letter was served on Mr. Oliver by a process server leaving the letter and its attachment in the mail box at 10-3430 Kingston Road.

16. The panel was satisfied that Mr. Oliver received the Institute's correspondence and that he failed to respond as required by Rule 104.

17. Accordingly, we concluded that Mr. Oliver was guilty of the charges, and 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. Oliver, pursuant to 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 and 2, the Discipline Committee finds Russell Gordon Oliver guilty of charges Nos. 1 and 2.

### **ORDER AS TO SANCTION**

18. Ms. Glendinning requested that Mr. Oliver be reprimanded, be fined between \$3,000 and \$5,000, be ordered to pay costs of \$3,200, and be expelled from the Institute. She also requested the usual notice disclosing Mr. Oliver's name, as well as newspaper notice of expulsion in the *Toronto Star* and the *Barrie Examiner*.

19. Following the panel's deliberations, the hearing resumed and the chair set out the terms of the order on the record. The formal written order issued on June 26, 2003 reads as follows:

### ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Oliver be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Oliver be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Oliver be and he is hereby charged costs fixed at \$3,200, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Oliver be and he is hereby expelled from membership in the Institute.
5. THAT notice of this Decision and Order, disclosing Mr. Oliver's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
  - (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 *Toronto Star* and the *Barrie Examiner*.

6. THAT Mr. Oliver 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.

### **Reprimand**

20. The panel was of the view that a reprimand is necessary as a specific deterrent to Mr. Oliver, to stress to him the importance of maintaining the standards of the profession, and the unacceptability of his conduct as a chartered accountant.

### **Fine**

21. The fine imposed in this case was imposed as a general and specific deterrent. We concluded that a fine of \$5,000 was appropriate, and was consistent with other decisions of the discipline committee, including *Bunte*, *Carroll* and *Gibbs*, in which the member did not respond at all to Institute correspondence.

22. In the absence of evidence as to Mr. Oliver's financial position, we considered three months an appropriate period of time for the payment of the fine.

### **Expulsion**

23. It appeared from the evidence that Mr. Oliver was ungovernable. He failed to respond to two letters asking for his response to a complaint which had been made against him. He failed to attend the assignment hearing at which the original hearing date was scheduled, and then failed to attend the second hearing date which had been rescheduled at his request. Mr. Oliver had been suspended from membership in good standing before the charges in this case were laid. He was advised of his suspension, but took no steps to return his membership to good standing. It appears that Mr. Oliver's failures to pay his fees, to respond to Institute correspondence, and to attend disciplinary hearings have been the result of a deliberate decision on his part to disregard the regulatory processes of the Institute.

24. Members who cannot or will not be governed by the Institute must be expelled from it. Expulsion in such cases is required as a general deterrent. As Mr. Oliver will not be governed as a member of the Institute and the profession, he must forfeit the privilege of calling himself a chartered accountant, and in this sense his expulsion is also a specific deterrent.

### **Notice**

25. The panel ordered notice in the manner prescribed as both a specific and general deterrent. We considered such notification also to be necessary to demonstrate to the public that the profession is regulating itself, so as to retain public confidence in the profession's ability to self-govern.

26. The panel ordered publication in the *Toronto Star* and *Barrie Examiner*, the two geographic areas in which the member had practised, in order to give specific notice to the public that Mr. Oliver was no longer a chartered accountant.

## **Costs**

27. The costs requested consisted of counsel fees of \$1,500 each for counsel to the discipline committee and counsel to the professional conduct committee, and costs of \$200 for the court reporter, all in respect of a half-day hearing.

28. The policy with respect to costs approved by the Institute's Council was filed by Ms. Glendinning. The policy makes it clear that the panel must exercise its discretion with respect to costs in any particular case, and provides some general guidance with respect to the quantum of costs in the event a panel decides to award costs.

29. In *Hoff v. Alberta Pharmaceutical Association*, which has been referred to in other decisions of the discipline committee, the principle was stated that members of a self-governing profession whose conduct has been found wanting by the profession's disciplinary tribunal can properly be required to pay the costs of the proceedings. This principle is reflected in the recent legislative change granting authority to the Institute's disciplinary tribunals to charge the costs of investigation and hearing, which is referred to in the Council's policy statement. The costs sought in this case will not fully reimburse the Institute for the costs of the investigation and hearing, as the only counsel fees requested are those for a half-day hearing on the partial indemnity scale contained in the tariff used in the Superior Court of Ontario. We concluded that it was appropriate to require Mr. Oliver to pay the \$3,200 costs requested, and provided the same three month payment period as for the fine.

DATED AT TORONTO THIS 19TH DAY OF AUGUST, 2003  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

### MEMBERS OF THE PANEL:

R.I. COWAN, CA  
J.M. MULHALL, CA  
J.G. SEDGWICK, CA  
R.D. WHEELER, FCA  
D.J. ANDERSON (Public representative)