

Sheila Ann Brown: Summary, as Published in *CheckMark*

Sheila Ann Brown, of Markham, was found guilty of two charges under Rule 203.2 of failing to cooperate in a professional conduct committee investigation. She was fined \$5,000 and suspended for six months. In a separate case, Ms. Brown 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, and two charges under Rule 303.1 of failing to supply, on a timely basis, reasonable information to the successor accountant about work done or being assumed. While engaged as the accountant for various clients, Ms. Brown failed to respond to letters and telephone calls, file tax returns, release books, documents and other property promptly, and cooperate in an investigation by the Registered Insurance Brokers of Ontario on behalf of a client. Ms. Brown was fined \$5,000, ordered to take two professional development courses, and suspended for twelve months.

CHARGE(S) LAID re Sheila Ann Brown, CA

The Professional Conduct Committee hereby makes the following charges against Sheila A. Brown, CA, a member of the Institute:

1. THAT, the said Sheila A. Brown, in or about the period August 1, 1998 to February 9, 1999, failed to cooperate with officers, servants or agents of the Institute who were appointed to arrange or conduct an investigation on behalf of the professional conduct committee, contrary to Rule 203.2 of the rules of professional conduct.

Dated at Niagara-on-the-Lake this 10th day of February, 1999.

DOUGLAS A. BOUFFORD, CA – CHAIR
PROFESSIONAL CONDUCT COMMITTEE

CHARGE(S) LAID re Sheila Ann Brown, CA

The Professional Conduct Committee hereby makes the following charges against Sheila A. Brown, CA, a member of the Institute:

1. THAT, the said Sheila A. Brown, in or about the period February 10, 1999 to June 20, 2000, failed to cooperate with officers, servants or agents of the Institute who were appointed to arrange or conduct an investigation on behalf of the professional conduct committee, contrary to Rule 203.2 of the rules of professional conduct.

Dated at Toronto this 17th day of July, 2000.

MICHAEL CONNOLLY, FCA – DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

CHARGE(S) LAID re SHEILA A. BROWN, CA

The Professional Conduct Committee hereby makes the following charges against Sheila A. Brown, CA, a member of the Institute:

1. THAT, the said Sheila A. Brown, CA, in or about the period July 1, 1996 through October 31, 1998, while engaged as the accountant for Nancy Mayer and/or Nancy Mayer and Associates Inc., failed to conduct herself in a manner that 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) She failed to meet the needs of her client and did not respond to letters and telephone calls from her client;
 - b) She failed to file the 1996 and 1997 tax returns and the 1996 Employers' Health Tax returns on behalf of Nancy Mayer and Associates Inc., having agreed to do so;
 - ~~c) She told the client she had filed her 1996 and 1997 corporate income tax returns prior to the filing deadline when she had not done so; Withdrawn by PCC~~
 - d) She failed to address communications from Revenue Canada and Ontario Ministry of Finance pertaining to her client when requested to do so by her client;
 - e) She failed to release promptly to her client books, documents and other property belonging to the client having been requested to do so;
 - ~~f) She advised the successor accountant, Mark Goodfield, that she had filed the Nancy Mayer and Associates Inc. January 31, 1997 tax returns when she had not done so. Withdrawn by PCC~~
2. THAT, the said Sheila A. Brown, CA, in or about the period January 14, 1998 through October 31, 1998, having been requested by her client, Nancy Mayer and/or Nancy Mayer and Associates Inc., in writing, to supply on a timely basis reasonable information to the successor accountant about work done or being assumed, failed to do so contrary to Rule 303.1 of the rules of professional conduct.
3. THAT, the said Sheila A. Brown, CA, in or about the period February 1, 1997 through October 31, 1998, while engaged as the accountant for Melanie Bailey, failed to conduct herself 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) She failed to meet the needs of her client and did not return telephone calls from her client;
 - b) She failed to file the 1997 personal income tax return on behalf of her client prior to the tax filing deadline of April 30, 1998, having agreed to do so;

- ~~c) She told the client she had filed her 1997 personal tax return prior to the filing deadline when she had not done so; Withdrawn by PCC~~
 - d) She included in income in the 1997 tax return prepared by her on Melanie Bailey's behalf a support payment in the amount of \$700 which should not have been included in income;
 - e) She failed to properly claim one of Melanie Bailey's children for purposes of the GST credit and failed to properly claim an equivalent-to-spouse tax credit for one of her children on the 1996 tax return prepared by her for Melanie Bailey.
4. THAT, the said Sheila A. Brown, CA, in or about the period April 1, 1996 through December 31, 1999, while engaged as the accountant for Karen Hansen and/or North City General Insurance Brokers Ltd. and/or Kabo Holdings Inc., failed to conduct herself 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) She failed to meet the needs of her client and did not return telephone calls from Karen Hansen or attend meetings that were arranged with her client;
 - b) She failed to prepare and file the 1996 and 1998 corporate income tax returns on behalf of North City General Insurance Brokers Ltd. having agreed to do so ~~and having billed and received payment for doing so; Amended at hearing~~
 - c) She failed to prepare and file the 1995, 1996, 1997 and 1998 corporate income tax returns on behalf of Kabo Holdings Inc. having agreed to do so;
 - d) She failed to properly prepare the 1997 tax return of North City **General** Insurance Brokers Inc. since she improperly reported the net income as \$36,888 when it was \$44,960 and she failed to add back the appropriate depreciation expense of \$1,380; *Amended at hearing*
 - e) She improperly recorded a RRSP deduction of \$48,868 on Karen Hansen's 1998 personal income tax return;
 - f) She failed to co-operate, on her client's behalf, with an investigation by the Registered Insurance Brokers of Ontario, the regulator of North City General Insurance Brokers Ltd., having been requested by her client for her professional assistance;
 - g) She failed to release promptly to her client books, documents and other property belonging to the client having been requested to do so.
5. THAT, the said Sheila A. Brown, CA, in or about the period June 30, 1999 through December 31, 1999, having been requested in writing by her client, Karen Hansen, and/or North City General Insurance Brokers Ltd. and/or Kabao Holdings Inc., to supply on a timely basis reasonable information to the successor accountant about work done or being assumed, failed to do so contrary to Rule 303.1 of the rules of professional conduct.

Dated at Ottawa this 17th day of May, 2001.

MICHAEL CONNOLLY, FCA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re SHEILA ANN BROWN, CA

DECISION AND ORDER IN THE MATTER OF: Charges against **SHEILA ANN BROWN, CA**, a member of the Institute, under **Rule 203.2** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE NOVEMBER 7, 2000

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 dated February 10, 1999 and the charge dated July 17, 2000, the Discipline Committee finds Sheila Ann Brown guilty of the charge dated February 10, 1999 and of the charge dated July 17, 2000.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Ms. Brown be reprimanded in writing by the chair of the hearing.
2. THAT Ms Brown be and she is hereby fined the sum of \$5,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Ms. Brown be suspended from the rights and privileges of membership in the Institute for a period of six (6) months from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Ms. Brown'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 Ms. Brown surrender her 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 Ms. Brown fails to comply with any of the requirements of this Order, she shall thereupon be expelled from membership in the Institute, and notice of her expulsion, disclosing her name, shall be given in the manner specified above, and in *The Globe and Mail* newspaper.

DATED AT TORONTO THIS 9TH DAY OF NOVEMBER, 2000
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re SHEILA ANN BROWN, CA

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **SHEILA ANN BROWN, CA**, a member of the Institute, under **Rule 203.2** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE NOVEMBER 7, 2000

1. This panel of the discipline committee met on November 7, 2000 to hear evidence concerning charges brought by the professional conduct committee against Sheila A. Brown.
2. The professional conduct committee was represented by Ms. Deborah McPhadden who was accompanied by the investigator appointed by the professional conduct committee, Ms. Melanie Russell. Sheila A. Brown was present at the hearing and was represented by her counsel, Mr. Ian Macmillan.
3. The hearing concluded on November 7, 2000 and the panel's decision and order was issued on November 9, 2000. These reasons, issued in writing pursuant to Bylaw 574, set out the panel's decision and order and the charges made by the professional conduct committee.

DECISION ON THE CHARGES

4. When the hearing had been called to order, two charges, one dated February 10, 1999 and one dated July 17, 2000 were entered as exhibits.
5. The charge dated February 10, 1999 reads:

THAT, the said Sheila A. Brown, in or about the period August 1, 1998 to February 9, 1999, failed to cooperate with officers, servants or agents of the Institute who were appointed to arrange or conduct an investigation on behalf of the professional conduct committee, contrary to Rule 203.2 of the rules of professional conduct.
6. The charge dated July 17, 2000 reads:

THAT, the said Sheila A. Brown, in or about the period February 10, 1999 to June 20, 2000, failed to cooperate with officers, servants or agents of the Institute who were appointed to arrange or conduct an investigation on behalf of the professional conduct committee, contrary to Rule 203.2 of the rules of professional conduct.
7. Ms. Brown entered a plea of guilty to both charges and confirmed that she understood that on the basis of her plea alone, she could be found guilty of the charges.
8. In presenting the case for the professional conduct committee, Ms. McPhadden filed an agreed statement of facts dated November 7, 2000 signed by her on behalf of the

professional conduct committee and by Ms. Brown on her own behalf. She also filed a 193 page document brief containing the relevant documents.

9. In all, four complaints were received by the professional conduct committee about Ms. Brown's professional conduct. Two complaints were received in February, 1998, both with respect to work done for the same former client. Another complaint on a different client matter was received in July, 1998. A fourth complaint on a third client matter was received and notice of it given to Ms. Brown in January, 2000.
10. This hearing is not concerned with the substance of the complaints received. The complaints are relevant only in that they prompted an investigation and on their face it is apparent the complaints warranted a prompt response from Ms. Brown.
11. In February, 1998, the associate director of standards enforcement wrote to Ms. Brown and asked for her comments on the complaints. When no response was received a registered letter was sent to Ms. Brown on March 26, 1998. Ms. Brown replied by letter dated April 20, 1998. The professional conduct committee appointed Ms. Melanie Russell to investigate the complaints.
12. On November 9, 1998, Ms. Russell reported by letter to counsel for the professional conduct committee outlining the difficulty she had investigating the complaints because Ms. Brown was not cooperating. The professional conduct committee sent a notice to Ms. Brown requiring her to attend a professional conduct committee meeting on February 9, 1999. Ms. Brown did not attend and the charge dated February 10, 1999 was made against her.
13. The hearing of this charge was scheduled for August 24, 1999. On August 23, 1999 Ms. Brown wrote to Ms. Russell apologizing for the delay, providing further information and documents which Ms. Russell needed, and stating: "My attention is completely focused on this matter until it is resolved."
14. Ms. Brown faced a number of difficulties as a result of her own serious illness, the illness of a close friend and the tragic death of Ms. Brown's mother who was killed in a fire in December, 1998. The discipline committee hearing was adjourned *sine die* on August 24, 1999 at Ms. Brown's request and upon her undertaking to cooperate promptly and fully.
15. The written undertaking which Ms. Brown gave reads:

I, SHEILA A. BROWN, C.A., a member of the Institute, hereby undertake to cooperate promptly and fully with officers, servants or agents of the Institute who were appointed to arrange or conduct an investigation on behalf of the Professional Conduct Committee with respect to the investigation relating to the complaint made by Nancy Mayer and the complaint made by Mark Goodfield.

Date: August 24, 1999

"Sheila A. Brown"

16. Ms. Russell reported to the professional conduct committee, which invited Ms. Brown to attend its meeting on December 14, 1999 to discuss the complaints. Ms. Brown did attend and advised the committee at that time that there were more documents which were relevant to the complaint and she raised some points which she asked that Ms. Russell pursue. But Ms. Brown made it impossible for Ms. Russell to do so.

17. Ms. Russell was also asked to investigate the complaint Ms. Brown was made aware of in January, 2000. Again, Ms. Brown made it impossible for her to do so. Ms. Brown had not provided any of the documentation which she said was relevant in December, 1999 by June 30, 2000. Finally, the professional conduct committee laid the second charge, the charge dated July 17, 2000.
18. On September 5, 2000, Ms. Brown appeared at a discipline committee assignment hearing with her lawyer, Mr. Macmillan, who had not previously represented her, and the date for this hearing was set for November 7, 8 and 9, 2000.
19. On October 27, 2000, Mr. Macmillan wrote enclosing documents which had been requested by the professional conduct committee and advising that after a diligent search Ms. Brown had been unable to find any other relevant documents. On November 1, Ms. Brown met with Ms. Russell and answered her questions on the outstanding matters. Thus in November, 2000, some 31 months after the first registered letter to Ms. Brown, Ms. Russell had the information she needed.
20. Ms. McPhadden, after reviewing the document brief and facts which are summarized above, concluded the case for the professional conduct committee. Mr. Macmillan made no representations on behalf of the member.
21. Upon reviewing the evidence, the panel concluded that both charges had been proven, and that Ms. Brown's failure to cooperate was professional misconduct. Accordingly, she was found guilty of both charges.
22. The formal written decision of this committee, which was sent to Ms. Brown on November 9, 2000 reads:

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 dated February 10, 1999 and the charge dated July 17, 2000, the Discipline Committee finds Sheila Ann Brown guilty of the charge dated February 10, 1999 and of the charge dated July 17, 2000.

ORDER AS TO SANCTION

23. In speaking to sanction, Ms. McPhadden on behalf of the professional conduct committee submitted that the appropriate order would include:
 - a written reprimand;
 - a fine of \$5,000;
 - a suspension for 2 to 3 months; and
 - notice of the decision and order, disclosing Ms. Brown's name, to be given to the Public Accountants' Council and the Canadian Institute of Chartered Accountants, and to be published in *CheckMark*.
24. Mr. Macmillan did not take issue with the requested reprimand or the request for publication of the notice. He did submit that a fine of \$5,000 was too much and that a suspension was inappropriate.
25. Following its deliberations on the issue of sanction, the committee made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Ms. Brown be reprimanded in writing by the chair of the hearing.
2. THAT Ms Brown be and she is hereby fined the sum of \$5,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Ms. Brown be suspended from the rights and privileges of membership in the Institute for a period of six (6) months from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Ms. Brown'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*.
6. THAT Ms. Brown surrender her 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.
7. THAT in the event Ms. Brown fails to comply with any of the requirements of this Order, she shall thereupon be expelled from membership in the Institute, and notice of her expulsion, disclosing her name, shall be given in the manner specified above, and in *The Globe and Mail* newspaper.
26. During the submissions of both Ms. McPhadden and Mr. Macmillan, the panel raised questions about the appropriateness of the order and asked why expulsion should not be considered. In particular, the panel wanted to know why it should not conclude that Ms. Brown was ungovernable in light of the fact that she was unwilling or unable to cooperate for a period of 31 months, and unwilling or unable for 14 months to comply with the undertaking she gave in August, 1999.
27. Counsel for the professional conduct committee said that as Ms. Brown had finally cooperated, it did appear that she was governable and accordingly the professional conduct committee, which is now ready to consider the substance of the complaints, was not asking for an order of expulsion.
28. Mr. Macmillan referred to a number of past cases which he said were similar to this case, and pointed out that not only had there been no expulsion but there had been no suspension in those cases. He submitted that the discipline committee should not apply a rule or principle without giving notice, and further that it would be unfair and inequitable to suspend Ms. Brown for her misconduct when members in the past who had been found guilty of similar misconduct had not been suspended. It would be even more unfair and inequitable, he submitted, to expel Ms. Brown for conduct which in the past has not been held to warrant even a suspension.

29. This panel accepts that when imposing a sanction, the discipline committee must be fair to the member before it, taking into account the particular facts and special circumstances of the case, and that the sanction imposed must be consistent with sanctions imposed in similar previous cases. Justice should be both individual and consistent.
30. In many of the cases referred to by Mr. Macmillan, the charge was that the member failed to cooperate in a practice inspection. The discipline committee has observed in the past that failure to cooperate with practice inspection is a serious departure from the required standard, but that failure to cooperate with an investigation being carried out by the professional conduct committee is even more serious. In the case of an investigation by the professional conduct committee, the Institute has a direct responsibility to the members of the public who have complained, and that responsibility includes an obligation to promptly investigate the complaints.
31. Beyond the difference between a failure to cooperate with practice inspection and an investigation by the professional conduct committee, the undertaking given on August 24, 1999 makes this case different from any of the cases Mr. Macmillan referred to, or indeed any of the cases which have been decided under Rule 203.2. The hearing was adjourned *sine die* at Ms. Brown's request, upon her representation that she was now focused on the matter, and upon her written undertaking to promptly and fully cooperate.
32. On the evidence before us, it is clear that Ms. Brown's plea of guilty to the charge dated February 10, 1999 is fully justified. Had the discipline committee proceeded on August 24, 1999, with or without a guilty plea, on the evidence we have seen Ms. Brown would have been found guilty and there would have been an order requiring her to cooperate within a relatively short period of time, failing which she would have been expelled.
33. Mr. Macmillan submitted that it would be unfair to Ms. Brown to impose a suspension or expulsion as the discipline committee had not given prior warning that a failure to comply with an undertaking would result in a suspension or expulsion. In the circumstances which are described above, this panel of the discipline committee does not think prior notice was required.
34. Mr. Macmillan was not Ms. Brown's counsel at the hearing in August, 1999, but she did have legal counsel. She knew or ought to have known in August, 1999 that in the absence of the undertaking, the hearing would likely have proceeded and she would have been required to co-operate promptly or be expelled. There is no reason in principle why an undertaking given by a member to the discipline committee should be treated differently than an order of the discipline committee requiring the member to do what the undertaking commits the member to do.
35. All members of the Institute who come before the discipline committee should know that in the event a hearing is adjourned upon an undertaking given by them which they then inexplicably fail to fulfil, there will be serious consequences, and likely expulsion.
36. Ms. Brown's illness, the illness of a close friend, and the death of her mother explain why she was not able to cooperate for some of the 31 months that she did not cooperate. The professional conduct committee, satisfied that Ms. Brown is governable, did not ask for her expulsion. In these circumstances, although some members of the panel thought expulsion more appropriate, a suspension was imposed.

37. We concluded that the principles of rehabilitation and specific deterrence required a fine of \$5,000 and a suspension of six months. In August, 1999 Ms. Brown had the opportunity to prove she had been rehabilitated. It took her 14 months to comply with her undertaking. Further, it appears she only complied with the undertaking late in October, 2000 in the certain knowledge that the discipline committee hearing was scheduled to commence on November 7, 2000. Moreover, it appears she was only able to comply with her undertaking with the assistance of her counsel. Clearly she needs to be specifically deterred from similar conduct in the future, and such deterrence should help to rehabilitate her.
38. The panel concluded that a fine of \$5,000 and a six month suspension was also required to satisfy the principle of general deterrence. In future, members who fail to comply with an undertaking given to the discipline committee should expect to be treated in the same manner as they would be for failure to comply with a provision of a discipline committee order. The discipline committee will not permit undertakings which are given to it to become meaningless.
39. Ms. Brown has had a turbulent time over the last three years, and we are not unsympathetic to her. But the Institute cannot maintain credibility as a governing body if its members can cause lengthy delays of complaint investigations which require prompt if not immediate attention.

DATED AT TORONTO THIS 28TH DAY OF FEBRUARY, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

P.M. CLEVELAND, FCA
D.W. DAFOE, FCA
A. HANSON, CA
J. T. ANDERS (Public representative)

DISCIPLINE COMMITTEE re SHEILA ANN BROWN, CA

DECISION AND ORDER IN THE MATTER OF: Charges against **SHEILA ANN BROWN, CA**, a member of the Institute, under **Rules 201.1 and 303.1** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE AUGUST 29, 2001

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, particulars (c) and (f) of charge No. 1 and particular (c) of charge No. 3 having been withdrawn, and charge No. 4 having been amended, and having heard the plea of guilty to charges Nos. 1, 2, 3, 4 and 5, as amended, the Discipline Committee finds Sheila Ann Brown guilty of charges Nos. 1, 2, 3, 4 and 5, as amended.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Ms. Brown be reprimanded in writing by the chair of the hearing.
2. THAT Ms. Brown be and she is hereby fined the sum of \$5,000, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Ms. Brown be suspended from the rights and privileges of membership in the Institute for a period of twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Ms. Brown be and she is hereby required to complete, by paying for and attending in their entirety, within twelve (12) months from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute:
 1. Staying Out of Trouble; and
 2. Triple Your Memory & Confidence, and Halve Your Stress,or, in the event a course listed above becomes unavailable, the successor course which takes its place.
5. THAT Ms. Brown surrender her 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, to be held during the period of suspension and thereafter returned to Ms. Brown.
6. THAT notice of this Decision and Order, disclosing Ms. Brown'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*.

7. THAT in the event Ms. Brown fails to comply with the requirements of this Order, she shall thereupon be expelled from membership in the Institute, and notice of her expulsion, disclosing her name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Ms. Brown's practice.

DATED AT TORONTO THIS 5TH DAY OF SEPTEMBER, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re SHEILA ANN BROWN, CA

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **SHEILA ANN BROWN, CA**, a member of the Institute, under **Rules 201.1 and 303.1** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE AUGUST 29, 2001

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on August 29, 2001 to hear charges brought by the professional conduct committee against Sheila A. Brown, a member of the Institute.
2. Mr. Paul Farley represented the professional conduct committee. The member was represented by Mr. Ian Macmillan.
3. The panel's decision and order was issued on September 5, 2001. These reasons, issued in writing pursuant to Bylaw 574, contain the panel's decision and order, and the charges laid by the professional conduct committee, as well as the reasons of the panel.
4. When the hearing was scheduled to commence at 10:00 a.m., Ms. Brown was not present. Mr. Macmillan, who apologized for Ms. Brown's absence, advised the panel that Ms. Brown's brother had called him to say that Ms. Brown was ill and was on her way to the hospital. Mr. Macmillan had several subsequent conversations directly with Ms. Brown regarding her attendance at this hearing. Mr. Macmillan requested an adjournment of the hearing until 2:00 p.m. in order to go to the hospital to try to get Ms. Brown to attend the hearing in the afternoon. The adjournment was granted.
5. When the panel reconvened shortly after 2:00 p.m., Ms. Brown was in attendance at the hearing. No further explanation was provided, or apology given, with respect to Ms. Brown's absence when the hearing was scheduled to commence in the morning.

DECISION ON THE CHARGES

6. The notice of hearing and charges were entered as exhibits to the hearing. The professional conduct committee withdrew particulars (c) and (f) of charge No. 1 and particular (c) of charge No. 3, and requested that particular (b) of charge No. 4 be amended by deleting the words "and having billed and received payment for doing so" at the end thereof, and that particular (d) of charge No. 4 be amended by adding the word "General" between the words "North City" and "Insurance Brokers". The panel agreed to these amendments. The charges, as amended, read as follows:

THAT, the said Sheila A. Brown, CA, in or about the period July 1, 1996 through October 31, 1998, while engaged as the accountant for Nancy Mayer and/or Nancy Mayer and Associates Inc., failed to conduct herself in a manner that 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) She failed to meet the needs of her client and did not respond to letters and telephone calls from her client;

- b) She failed to file the 1996 and 1997 tax returns and the 1996 Employers' Health Tax returns on behalf of Nancy Mayer and Associates Inc., having agreed to do so;
- d) She failed to address communications from Revenue Canada and Ontario Ministry of Finance pertaining to her client when requested to do so by her client;
- e) She failed to release promptly to her client books, documents and other property belonging to the client having been requested to do so;

THAT, the said Sheila A. Brown, CA, in or about the period January 14, 1998 through October 31, 1998, having been requested by her client, Nancy Mayer and/or Nancy Mayer and Associates Inc., in writing, to supply on a timely basis reasonable information to the successor accountant about work done or being assumed, failed to do so contrary to Rule 303.1 of the rules of professional conduct.

THAT, the said Sheila A. Brown, CA, in or about the period February 1, 1997 through October 31, 1998, while engaged as the accountant for Melanie Bailey, failed to conduct herself 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;

- c) She failed to meet the needs of her client and did not return telephone calls from her client;
- d) She failed to file the 1997 personal income tax return on behalf of her client prior to the tax filing deadline of April 30, 1998, having agreed to do so;
- d) She included in income in the 1997 tax return prepared by her on Melanie Bailey's behalf a support payment in the amount of \$700 which should not have been included in income;
- e) She failed to properly claim one of Melanie Bailey's children for purposes of the GST credit and failed to properly claim an equivalent-to-spouse tax credit for one of her children on the 1996 tax return prepared by her for Melanie Bailey.

THAT, the said Sheila A. Brown, CA, in or about the period April 1, 1996 through December 31, 1999, while engaged as the accountant for Karen Hansen and/or North City General Insurance Brokers Ltd. and/or Kabo Holdings Inc., failed to conduct herself 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;

- e) She failed to meet the needs of her client and did not return telephone calls from Karen Hansen or attend meetings that were arranged with her client;

- f) She failed to prepare and file the 1996 and 1998 corporate income tax returns on behalf of North City General Insurance Brokers Ltd. having agreed to do so;
- g) She failed to prepare and file the 1995, 1996, 1997 and 1998 corporate income tax returns on behalf of Kabo Holdings Inc. having agreed to do so;
- h) She failed to properly prepare the 1997 tax return of North City General Insurance Brokers Inc. since she improperly reported the net income as \$36,888 when it was \$44,960 and she failed to add back the appropriate depreciation expense of \$1,380;
- i) She improperly recorded a RRSP deduction of \$48,868 on Karen Hansen's 1998 personal income tax return;
- j) She failed to co-operate, on her client's behalf, with an investigation by the Registered Insurance Brokers of Ontario, the regulator of North City General Insurance Brokers Ltd., having been requested by her client for her professional assistance;
- k) She failed to release promptly to her client books, documents and other property belonging to the client having been requested to do so.

THAT, the said Sheila A. Brown, CA, in or about the period June 30, 1999 through December 31, 1999, having been requested in writing by her client, Karen Hansen, and/or North City General Insurance Brokers Ltd. and/or Kabao Holdings Inc., to supply on a timely basis reasonable information to the successor accountant about work done or being assumed, failed to do so contrary to Rule 303.1 of the rules of professional conduct.

- 7. Ms. Brown entered a plea of guilty to each of the charges and confirmed that she understood that on the basis of her plea alone she could be found guilty of each of the charges.
- 8. Mr. Farley filed an agreed statement of facts with respect to the charges that laid out, in some detail, the evidence against Ms. Brown relating to each of the charges.
- 9. Mr. Macmillan called no evidence and had no submissions with respect to the charges.
- 10. On the evidence before the panel, it was clear that the member was guilty of the charges and, accordingly, she was found guilty of each of the charges. The decision reads:

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, particulars (c) and (f) of charge No. 1 and particular (c) of charge No. 3 having been withdrawn, and charge No. 4 having been amended, and having heard the plea of guilty to charges Nos. 1, 2, 3, 4 and 5, as amended, the Discipline Committee finds Sheila Ann Brown guilty of charges Nos. 1, 2, 3, 4 and 5, as amended.

ORDER AS TO SANCTION

11. Mr. Farley argued that the panel was dealing with a member who had gone awry in 1996 and not with a case involving moral turpitude. He stated that Ms. Brown had essentially abandoned her clients in 1996 by not returning her clients' calls, by not providing her clients' books and records to their successor auditors, and by not dealing with her clients' affairs (such as cooperating with regulatory investigations). He argued that Ms. Brown is not a bad person, but is a bad chartered accountant.
12. Mr. Farley advised that the professional conduct committee was looking for a rehabilitation penalty. He further argued that "all hope was not lost" with respect to Ms. Brown but that Ms. Brown did need a wake up call. The public needs to know that the profession will not tolerate members whose personal problems affect their work, and that if that happens there will be consequences.
13. The sanction requested by the professional conduct committee was a reprimand in writing from the chair of the hearing, a fine in the amount of \$5,000, a twelve month suspension, selected professional development courses, and full publicity.
14. Mr. Farley advised that there were very few precedents dealing with this type of conduct where no moral turpitude was involved. He referred the panel to the *Cuke, McCabe* and *Ursu* cases. He also briefly described why a twelve month suspension was appropriate in a case that did not involve moral turpitude. The professional conduct committee determined that twelve months would be an appropriate period for suspension in order to allow Ms. Brown time to get her life in order.
15. Mr. Macmillan advised the panel that he and Mr. Farley were on common ground with respect to sanction to a significant degree.
16. Mr. Macmillan told the panel that he had no answer for Ms. Brown's conduct with respect to the matters that gave rise to the charges. Why Ms. Brown abandoned her clients during this period was unknown to him. He acknowledged that Ms. Brown undertook to do work and then did not do it, and that the reasons for that conduct were a mystery. However, in his opinion, Ms. Brown's conduct involved neglect rather than abandonment.
17. Mr. Macmillan also argued that suspensions of twelve months or more almost always involved moral turpitude, and that a twelve month suspension was at the top of the range in terms of suspension periods.
18. Mr. Macmillan advised the panel that Ms. Brown has spent a lot of time agonizing over these events and that she deeply regrets any harm she may have caused.
19. Following Mr. Macmillan's submissions, the panel had a number of questions for Mr. Macmillan relating to how the panel could fashion a sanction that would stop Ms. Brown from having similar conduct issues in the future. The panel also had concerns regarding whether a sanction based primarily on rehabilitation was appropriate.
20. Mr. Macmillan provided the panel with two additional submissions in response to these questions and concerns. First, he advised that Ms. Brown had begun to see Dr. Hank Fraser, a psychologist, and Dr. Phillip Harry, a psychotherapist, at his recommendation following a missed appearance before the professional conduct committee. The panel

was not provided with any evidence from the doctors, including their qualifications. No diagnosis or prognosis was presented, and it was unclear whether the doctors were helping Ms. Brown deal with the conduct that resulted in the charges before the panel. Secondly, Mr. Macmillan advised that Ms. Brown has taken a number of professional development courses at the Institute over the last couple of years.

21. After deliberating on the evidence and the submissions heard, the committee made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Ms. Brown be reprimanded in writing by the chair of the hearing.
2. THAT Ms. Brown be and she is hereby fined the sum of \$5,000, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Ms. Brown be suspended from the rights and privileges of membership in the Institute for a period of twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Ms. Brown be and she is hereby required to complete, by paying for and attending in their entirety, within twelve (12) months from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute:

- Staying Out of Trouble; and
- Triple Your Memory & Confidence, and Halve Your Stress,

or, in the event a course listed above becomes unavailable, the successor course which takes its place.

5. THAT Ms. Brown surrender her 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, to be held during the period of suspension and thereafter returned to Ms. Brown.
6. THAT notice of this Decision and Order, disclosing Ms. Brown'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*.
7. THAT in the event Ms. Brown fails to comply with the requirements of this Order, she shall thereupon be expelled from membership in the Institute, and notice of her expulsion, disclosing her name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Ms. Brown's practice.

General Comments

22. The panel struggled with the appropriateness of the sanction proposed by the professional conduct committee, and whether the proposed sanction protected the public interest. The panel felt that it had been left in a quandary by this case because Ms. Brown had made no effort to explain her conduct – either the conduct that resulted in the charges before this committee, or her unexplained lateness in arriving for the hearing. As well, the panel was uncomfortable with the lack of medical information provided with respect to Ms. Brown's current treatment, and whether the condition for which she is currently receiving treatment impacts upon her ability to practise as a chartered accountant.
23. As a result of these concerns, the chair of the hearing verbally reprimanded Ms. Brown when our decision was provided to her. The panel encourages Ms. Brown to continue to receive medical treatment at least during her period of suspension.

Reprimand

24. The panel believes that a reprimand in writing from the chair of the hearing stresses to the member the unacceptability of her conduct as a chartered accountant.

Fine

25. The professional conduct committee submitted that a fine should be levied against the member in the amount of \$5,000. The panel determined that a fine of \$5,000 was appropriate in this case.

Professional Development Courses

26. The panel determined that the two professional development courses (or their successor courses) recommended by the professional conduct committee were appropriate in this case, namely:
- Staying out of Trouble; and
 - Triple Your Memory and Confidence, & Halve Your Stress.
27. The panel ordered these two professional development courses in order to assist in the member's rehabilitation.

Suspension

28. The panel ultimately determined that a suspension of twelve months was appropriate in this case. However, the member should note that some members of the committee questioned whether she was governable. If a majority of the committee had come to the conclusion that Ms. Brown was ungovernable, a different sanction would have been imposed.

Notice

29. The giving of notice of the discipline committee's decision and order, disclosing the member's name, is, in the opinion of the panel, a general deterrent. Communication of the fact that the profession views breaches of its bylaws and rules of professional conduct seriously is an important factor in the governance of the profession. Such notification is also 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.

Certificate

30. The panel determined that it was appropriate for Ms. Brown to surrender her certificate of membership for the period of her suspension.

Expulsion for Non-Compliance

31. The provision of the order that Ms. Brown be expelled if she does not comply with the terms of the order is based on the fact that, prior to the date of the hearing and even to some extent at the hearing, Ms. Brown showed an unwillingness to be governed by the Institute. The committee concluded that, if this unwillingness were to continue, it would be inappropriate for Ms. Brown to remain a member of the Institute.
32. The committee also concluded that, in the event of expulsion, there would be no reason to interfere with the application of Bylaw 575(3), and therefore ordered that notice of such expulsion be given in a newspaper distributed in the geographic area of the member's practice.

DATED AT TORONTO THIS 25TH DAY OF SEPTEMBER, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

M. BRIDGE, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

P.A. GOGGINS, CA
M.A. MANERA, CA
R.D. WHEELER, FCA
B.A. YOUNG (Public representative)

APPEAL COMMITTEE re SHEILA ANN BROWN, CA

ORDER IN THE MATTER OF: An appeal by **SHEILA ANN BROWN, CA**, a member of the Institute, of the Decision and Order of the Discipline Committee made on November 7, 2000 pursuant to the bylaws of the Institute, as amended.

ORDER MADE SEPTEMBER 17, 2001

HAVING heard and considered the submissions made on behalf of the parties relating to the abandonment by Ms. Brown of her appeal, and having received and filed Notice of Abandonment, the Appeal Committee orders as follows:

1. THAT the decision and order of the discipline committee made on November 7, 2000 becomes final, binding and conclusive pursuant the bylaws effective today.
2. THAT all time periods stipulated in the discipline committee's order begin today, including Ms. Brown's suspension from the rights and privileges of membership in the Institute.
3. THAT costs fixed in the amount of \$500 be paid by Ms. Brown and delivered to the secretary of the appeal committee within thirty (30) days from today, failing which Ms. Brown shall be expelled from membership in the Institute.
4. THAT Ms. Brown's abandonment of her appeal is accepted.

DATED at Toronto, this 17th day of September, 2001.

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