

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 2010

APPEAL COMMITTEE

IN THE MATTER OF: An appeal by **STEPHEN LORNE LEVINE, CA**, a member of the Institute, of the Decision and Order of the Discipline Committee made on December 16, 2009, pursuant to the bylaws of the Institute, as amended.

TO: Mr. Stephen L. Levine, CA

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Order made June 7, 2011)

1. This appeal was heard by a panel of the Appeal Committee of the Institute of Chartered Accountants of Ontario on June 7, 2011. Paul Farley appeared on behalf of the Professional Conduct Committee. Mr. Levine attended and was unrepresented by counsel. He confirmed he understood he had the right to be represented by counsel and that he was waiving that right. Richard Steinecke attended the hearing as counsel to the Appeal Committee.

2. The following charge was laid against Mr. Levine by the Professional Conduct Committee on July 23, 2009:

THAT the said Stephen L. Levine, in or about the period September 15, 2008 through October 15, 2008, failed to act at all times 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 while pursuing collection of professional fees from his former client, "RH":

- a) He threatened to release confidential information of "RH" to third parties;
- b) He threatened to report "RH" to the Canada Revenue Agency for allegedly filing false income tax returns; and
- c) He threatened to pursue criminal charges against "RH" for allegedly swearing a false affidavit.

3. The Decision and Order appealed from, dated December 21, 2009, reads as follows:

DECISION

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Stephen Lorne Levine guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Levine be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Levine 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. Levine be and he is hereby required to complete, by paying for and attending in its entirety, on or before July 1, 2010, the following professional development course made available through the Institute:
(a) *Staying Out of Trouble*
or, in the event the course listed above becomes unavailable, the successor course which takes its place.
4. THAT notice of this Decision and Order, disclosing Mr. Levine's name, be given after this Decision and Order becomes final under the bylaws:
(a) to all members of the Institute;
(b) to the Public Accountants Council for the Province of Ontario;
(c) to all provincial institutes/Ordre,
and shall be made available to the public.

IT IS FURTHER ORDERED:

5. THAT Mr. Levine be and he is hereby charged costs fixed at \$8,500 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.

AND IT IS FURTHER ORDERED:

6. THAT in the event Mr. Levine fails to comply with any of the requirements of this Order, he shall be suspended from the rights and privileges of membership in the Institute and his public accounting licence shall be suspended until such time as he does comply, provided that he complies within six (6) months from the date of his suspension, and in the event he does not comply within the six (6) month period, he shall be expelled from membership in the Institute and his public accounting licence shall be revoked, and notice of his expulsion and licence suspension and revocation, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Levine's practice. All costs associated with the publication shall be borne by Mr. Levine and shall be in addition to any other costs ordered by the committee.
4. On this appeal, Mr. Levine seeks a reversal of the decision of guilty made by the Discipline Committee. If the decision is upheld, Mr. Levine seeks a reduction in the quantum of the fine and costs assessed. He also appeals the order of publicity.

Submissions

5. Mr. Levine submitted that there were several procedural errors in the course of the discipline hearing. He said there was confusion by the discipline panel over the charge and which particular he was found guilty of contravening, resulting in the Professional Conduct Committee attempting to amend the charge and trying to add a fourth charge under Rule 201.1

6. Mr. Levine stated that there were procedural errors by counsel to the Discipline Committee who, he felt, had stepped beyond her role by soliciting the advice of counsel to the Professional Conduct Committee, thereby breaching her independence. He indicated that the Discipline Committee Chair had sought the advice of the counsel to the Professional Conduct Committee. Mr. Levine said he had been denied access to cases where the member was successful in his defence by PCC counsel.

7. Mr. Levine submitted that the word "confidential" had been purposely omitted from the section of the reasons dealing with the release of information in Charge 1(a), which was pertinent to his defence before the Discipline Committee.

8. In making submissions concerning whether the third party liability issue was raised with the investigator, Mr. Levine sought to have the Appeal panel listen to a tape of the investigator's interview. Mr. Farley, on behalf of the Professional Conduct Committee, raised an objection that it would not be proper for the panel to hear new evidence. Mr. Farley stated that the investigator was available as a witness at the discipline hearing and the transcript could have been put before the discipline panel by Mr. Levine's counsel at that time. Mr. Levine's counsel chose not to do so nor did he raise the matter in cross-examination or redirect.

9. Mr. Farley distributed a Supplemental Brief containing rulings on fresh evidence, noting that the third party liability evidence is a collateral issue which would have no impact on the decision in this case. Mr. Farley submitted that the emails sent by Mr. Levine were scandalous, every particular of the charge was proven and a member cannot release confidential information including working papers. Mr. Farley stated that the transcript was evidence that was available at the discipline hearing and does not meet the legal criteria for the introduction of fresh evidence.

10. Mr. Steinecke counselled the panel that the usual test on new evidence was correctly cited and since the tape was available at the time of the discipline hearing, Mr. Levine's counsel could have raised the issue then. Parties generally make their case at the first level of hearing and the purpose of an appeal is not to retry the case.

11. The panel, during its deliberations, reviewed the submissions of both parties and considered the advice of counsel. The panel decided to accept the submission by Mr. Farley and the advice of counsel and concluded that it would not allow the fresh evidence to be admitted. The panel noted that Mr. Levine was represented by counsel at the Discipline hearing and the tape and the investigator were available to be introduced as evidence at that time. Mr. Levine and his counsel decided not to introduce this evidence. This panel decided that it would not be appropriate to review this evidence at this Appeal hearing.

12. Mr. Levine submitted that counsel for the Professional Conduct Committee had misled the Discipline Committee on the reliability of a witness and that weight had been placed on the fact that some evidence presented at the hearing was not originally presented to the investigator.

13. Mr. Levine stated that the fine and costs assessed were as high as those assessed in cases involving fraud and theft. While he may have been over-zealous in his efforts to collect his fees, Mr. Levine felt that his actions were not equivalent to the precedent cases. He informed the panel that he is still owed \$1,900 from his client and due to major surgery is unable to work full-time. Mr. Levine asked that if the panel upheld the Discipline Committee's decision that it reconsider the quantum of the fine and costs.

14. Mr. Farley, on behalf of the Professional Conduct Committee, submitted that the appeal is based on a misunderstanding of the ICAO's disciplinary processes and the law. During the two-day discipline hearing, Mr. Levine was represented by legal counsel but does not like the outcome of the hearing. The facts in this case, as set out in the Discipline Committee's reasons, are that Mr. Levine had a client who needed further accounting work done. When the client did not pay the monies owing, Mr. Levine sent emails making threats to disclose information to CRA, pursue criminal charges, and to provide the client's confidential records to his ex-wife. Mr. Farley stated that this was scandalous conduct for a member of the profession.

15. Mr. Farley stated that there was never confusion over the charge laid against Mr. Levine. There was one charge with three particulars that outlined how he carried out the breach and all particulars were proven.

16. In response to the issue raised about the role of counsel, Mr. Farley stated that the Discipline Committee counsel must ensure that the panel hears all submissions from both parties. He said that it is appropriate for the Discipline Committee counsel to speak to counsel to both parties.

17. Mr. Farley submitted that, at the time of the discipline proceedings, Mr. Levine had attempted to skirt his own counsel by directly contacting counsel to the Professional Conduct Committee to obtain precedent information. PCC counsel did cooperate by providing the requested information to Mr. Levine's counsel, as is customary procedure. Mr. Levine did not dispute the fact that his counsel did receive the required information.

18. Mr. Farley stated that the fine assessed is within the appropriate range, noting that cases cited by Mr. Levine involve suspension or expulsion which would affect the quantum of the fine. With respect to costs, the Discipline Committee considered all relevant factors, including Mr. Levine's financial circumstances, before assessing \$8,500 which is 25% of the actual costs incurred.

Order

19. This panel of the Appeal Committee considered all the submissions, as well as the material filed in this matter and, after deliberations, dismissed the appeal. The parties were informed of the decision at the conclusion of the appeal, and were provided with a written Order dated June 8, 2011, as follows:

HAVING heard and considered the submissions made by Stephen Levine and on behalf of the Professional Conduct Committee, and having reviewed all of the documentation provided by the parties, the Appeal Committee dismisses the appeal of the Decision and Order of the Discipline Committee made on December 16, 2009.

Reasons

20. It has been stated on numerous occasions, however it is important to continually emphasize to our members and the public, that the role of this committee is not to retry the matter before us, but to determine whether the Discipline Committee committed any errors in its consideration of the evidence before it. Equally, deference is owed to the Discipline Committee in its consideration of sanctions and costs. Those orders should not be interfered with except in the clearest of instances. The mere fact that the Appeal Committee might have reached a different conclusion on sanction does not justify the altering of sanction imposed, unless that sanction is beyond the range of sanctions for similar conduct in similar circumstances or is based on incorrect information or considerations.

21. As noted above in Mr. Levine's submissions, he asserted that a number of errors were made by the Discipline Committee. The panel reviewed the submissions of both Mr. Levine and Mr. Farley on behalf of the Professional Conduct Committee. The panel of course also had the benefit of the transcript from the Discipline Committee hearing. The panel reviewed and deliberated on each allegation of error and concluded as follows:

- Relating to the charge against Mr. Levine, the panel acknowledges and the transcripts of the Discipline Hearing clearly indicate that at the conclusion of the hearing, there was some confusion. However this panel understands that there was one charge and that charge had three particulars that outlined how Mr. Levine carried out the breach and that all the particulars of the charge were proven. The panel concluded that Mr. Levine (not being a lawyer) may not have had a full understanding of the relationship between the charge and the particulars. In this panel's view no error occurred.
- Relating to the procedural errors by counsel for the Discipline Committee and the interaction with counsel for the Professional Conduct Committee, the panel clearly has a full appreciation and understands the role of the respective counsel. The panel also understands how a member, who observes social conversation between counsels during any recess of the proceedings, may reach the conclusion of "unfair bias". The only evidence produced at this hearing was an affidavit of Elizabeth Cowie, counsel to the Discipline Committee, wherein she stated in summary that any contact between herself and counsel for the Professional Conduct Committee was in furtherance of the hearing process. As Mr. Levine did not question this affidavit and, in fact, made submissions on it, we can only assume that he has accepted this evidence. The panel rejected any suggestion of this alleged bias; however, the panel wanted to comment that any conversation between the respective counsels should be on the record and that there should not be any "social discussion" to avoid any "appearance of bias".
- Mr. Levine submitted that the Professional Conduct Committee had misled the Discipline Committee on the reliability of a witness and the amount of weight that should be placed by the Discipline Committee on the testimony of this witness. In addition, Mr. Levine submitted that certain evidence at the Discipline hearing was not available to the investigator. This panel rejected this submission and deferred to the Discipline Committee to decide on the importance and weight to be placed on any evidence it heard. In any event, this case did not turn on the credibility of witnesses; there was no dispute about the key facts (e.g., the emails). The issue was the appropriateness of those communications.

- The panel was asked by Mr. Levine to review the sanctions imposed. The panel heard submissions from both parties on sanction. The panel considered the submissions and did not see any reason to disturb the sanctions imposed by the Discipline Committee.

Costs

22. Mr. Farley filed a Costs Outline (Exhibit 2) summarizing the time spent on this appeal, requesting that Mr. Levine pay one-half the costs on a partial indemnity basis. Mr. Levine stated that he is unable to pay costs in addition to the fine and costs assessed by the Discipline Committee and legal fees. Mr. Levine submitted he is currently under a doctor's care and no longer able to work full-time, necessitating his wife's return to work. Mr. Levine asked for the panel's compassion in not ordering further costs.

23. The panel considered whether costs associated with the appeal should be awarded against Mr. Levine. The *Chartered Accountants Act 2010* does give the Institute the right to seek costs of an appeal. After deliberation, the panel agreed that no costs would be awarded for this appeal.

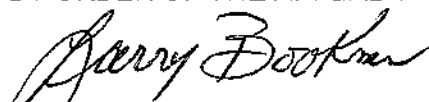
24. Panel decided that costs were not to be awarded for the following reasons:

- The awarding of costs is new to this committee as a result of recent amendments to the *Chartered Accountants Act 2010*. The panel did not feel that this case was one that the awarding of costs was appropriate.
- The panel felt that Mr. Levine was genuine in his view of why the Discipline Committee had erred and that this appeal was not "frivolous".
- The panel in reviewing the reasons of the Discipline Committee was aware that the member was under financial strain. The panel accepted this fact and was convinced that there was no reason to aggravate the financial position of the member.

25. Had the panel decided to award costs, the factors it would have considered include:

- a) The complexity of the proceeding;
- b) The importance of the issues;
- c) The conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
- d) Whether any step in the proceeding was improper, vexatious or unnecessary or taken through negligence, mistake or excessive caution;
- e) A party's denial or refusal to admit anything that should have been admitted;
- f) The experience of the party's lawyer; and
- g) Any other matter relevant to the question of costs.

DATED AT TORONTO THIS 16th DAY OF SEPTEMBER, 2011.
BY ORDER OF THE APPEAL COMMITTEE



L.P. BOOKMAN, CA – DEPUTY CHAIR
APPEAL COMMITTEE

MEMBERS OF THE PANEL:

K.N. ARMSTRONG (PUBLIC REPRESENTATIVE)
M. STEBILA, CA
D.O. STIER, CA.

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: A charge against **STEPHEN LORNE LEVINE, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Stephen L. Levine, CA

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision and Order made December 16, 2009)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on December 15 and 16, 2009, to hear a charge of professional misconduct brought by the Professional Conduct Committee against Stephen Lorne Levine, CA, a member of the Institute.

2. Alexandra Hersak appeared on behalf of the Professional Conduct Committee. Mr. Levine attended and was represented by his counsel, Brandon Jaffe.

3. The decision of the panel was made known at the conclusion of the hearing and the written Decision and Order sent to the parties on December 21, 2009. These reasons, given pursuant to Bylaw 574, contain the charge, the decision, the order, and the reasons of the panel for its decision and order.

CHARGE

4. The following charge was laid against Mr. Levine by the Professional Conduct Committee on July 23, 2009:

THAT the said Stephen L. Levine, in or about the period September 15, 2008 through October 15, 2008, failed to act at all times 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 while pursuing collection of professional fees from his former client, "RH":

- a) He threatened to release confidential information of "RH" to third parties;
- b) He threatened to report "RH" to the Canada Revenue Agency for allegedly filing false income tax returns; and
- c) He threatened to pursue criminal charges against "RH" for allegedly swearing a false affidavit.

PLEA

5. Mr. Levine entered a plea of not guilty to the charge.

EVIDENCE

6. The Professional Conduct Committee called as a witness John Norman Douglas, CA, the investigator retained in this matter. Mr. Jaffe, on behalf of Mr. Levine, called Alan Herbert Page, CA, a trustee in bankruptcy; "RH", the person referenced in the charge; "WS", the former spouse of "RH"; and Mr. Levine testified on his own behalf.

7. Many of the facts in this matter are undisputed. Mr. Levine performed accounting services for both RH and his company, CCC, including the preparation of the annual financial statements for CCC. In 2007, RH declared bankruptcy, both personally and on behalf of his company, CCC. At that time he owed Mr. Levine money for accounting services for the fiscal years 2004 and 2005. Neither RH nor CCC included Mr. Levine as a creditor in their Statements of Affairs.

8. RH was told by his trustee in bankruptcy, Alan Page, that financial statements for CCC had to be prepared for the years 2006 and 2007. RH approached Mr. Levine to compile those financial statements, and Mr. Levine agreed. The engagement letter (Exhibit 3, Tab 1), signed by both Mr. Levine and RH and dated February 1, 2008, includes an agreement that RH is personally guaranteeing payment of the accounting fees for the retainer, estimated at \$3,000, as well as the unpaid balances from the previous two years.

9. It is an offence under the *Bankruptcy and Insolvency Act* for a bankrupt to contract for services valued at greater than \$500 without informing the other party to the contract of the bankruptcy. In his statement to the investigator, Mr. Douglas, RH said that he informed Mr. Levine of the bankruptcy at the time of the retainer. Mr. Levine, both in his statement to the investigator and in his testimony, denied knowing about the bankruptcy until July 2008. In his testimony, RH also denied telling Mr. Levine of the bankruptcy at the time of the retainer.

10. For reasons set out more fully below, the panel finds RH to have been a self-serving and unreliable witness, and rejects his evidence where it conflicts with the other evidence. Regardless, the panel is persuaded it is more likely than not that Mr. Levine did not know of the bankruptcy at the time he accepted the engagement for 2006 and 2007. Not only has Mr. Levine been consistent in his denial, it makes no sense that an accountant who on all the facts was determined to be paid would accept an engagement from a client who already owed him money unless he believed he would be paid. Further, he took no steps to determine whether he was listed as a creditor for the debt owed prior to the bankruptcy, steps he would logically have taken had he been aware of it.

11. Mr. Levine performed the accounting for which he had been contracted. He did not receive payment. He met with RH on August 18, 2008. RH offered him a cheque for \$2,000 in partial satisfaction of the debt. Mr. Levine rejected the cheque, demanding the full payment of \$19,000.

12. There followed a series of e-mails between Mr. Levine and RH, eventually involving other persons. RH, in his testimony, claimed he had not authored any of the e-mails apparently originating with him. Rather, he testified that they had been written and sent by his then-

girlfriend, KL, without his knowledge or consent. He had not made this claim previously during the investigation. He also testified that KL, not he, had made the complaint to the Institute.

13. Mr. Levine admitted creating and sending the e-mails that went from his account. He characterized them as "collection bluster", both to the investigator and in his evidence. Although he testified he was suspicious that the e-mails purportedly emanating from RH had not originated with him, he did not mention that suspicion to the investigator, or in the e-mails themselves.

14. The e-mails were entered into evidence and excerpts are quoted in these reasons. In them, Mr. Levine makes a number of statements concerning his intended actions should he not receive payment of his account.

15. In an e-mail on September 15, 2008, Mr. Levine states that, unless he receives a cheque by the next day, he will provide his records to CRA and to WS. WS is the ex-wife of RH, for whom Mr. Levine had performed some accounting services in the past. At that time there were proceedings in the Family Court between WS and RH for support. In the same message, Mr. Levine states: "The amounts that the courts will force you to pay and the CRA audits you will endure when I turn over the records will be much greater then anything that you owe me." (Exhibit 3, Tab 9)

16. RH's lawyer responds (on September 17, 2008) to this "threat" and demands Mr. Levine not disclose the records to any third party. In reply, Mr. Levine indicates that RH provided false information for Mr. Levine to use in preparation of RH's tax returns, and that Mr. Levine has a "professional requirement to report falsely filed returns." (Exhibit 3, Tab 10) The information to which Mr. Levine refers appears to be a series of cash withdrawals from CCC in 2006 and 2007 which Mr. Levine asks RH, on September 18, 2008, whether he declared (Exhibit 3, Tab 13) them as personal taxable income.

17. Mr. Levine continues to assert that he will be giving RH's files to WS as he is "purging [his] office of all files of former clients" and has no means of contacting RH. Once again, RH's lawyer becomes involved. Also, an e-mail is sent from RH's account stating that Mr. Levine is not to release any of RH's files to WS, and that RH will make arrangements to have the files picked up. Mr. Levine sends a one line response: "Will your outstanding bill with our office be paid prior to pick up?" (Exhibit 3, Tab 14)

18. Mr. Levine also replies to RH's lawyer: "Too late to do anything different – Files are out of my office." (Exhibit 3, Tab 15) In his testimony, Mr. Levine explained that he had no intention of releasing the files to WS; rather, it was a ploy to get RH to come into the office and talk to him. WS, in her testimony, confirmed that Mr. Levine never gave any files to her.

19. On September 23, 2008, Mr. Levine sends an e-mail to WS stating he would be "happy to comply and testify on your behalf", presumably at the Family Court proceedings with RH (Exhibit 3, Tab 16). The e-mail is also sent to RH at two separate addresses. Both Mr. Levine and WS testified that he would only have testified under compulsion. The e-mail does not contain that limitation.

20. In a series of e-mails later that same month to both KL and RH, and copied to family members of RH, Mr. Levine takes the position RH has signed a bulk sales affidavit without making proper disclosure in the document, and has committed a criminal offence. He concludes by stating: "The next step will be a criminal prosecution on both of you." (Exhibit 3, Tab 17)

21. Mr. Levine follows up with an e-mail on October 3, 2008 to the same group of people which states, in its entirety: "I have provided my lawyer with direction to proceed with criminal charges against the two of you and I am no longer in possession of any of your tax files." (Exhibit 3, Tab 18) From the testimony of Mr. Levine and RH, it appears no charges were laid against RH. Further, it appears the statement concerning the tax files was not true. In his evidence, Mr. Levine characterized the criminal offence as RH's failure to include him in the list of creditors on his bankruptcy.

22. There is a further exchange of e-mails on October 8, 2008, during which Mr. Levine states that he is going to take out a full page ad and distribute pamphlets "at your new store to inform all customers of your business activities." He also states he will be suing KL and RH, and proceeding with criminal charges, and that WS has asked him to testify on her behalf. (Exhibit 3, Tab 19) Mr. Levine, in his evidence, indicated that, with respect to the comments about publicity, it was a nonsense statement that he should not have made.

23. As indicated above, both WS and Alan Page testified on Mr. Levine's behalf. Other than confirming that she had been copied on a number of the e-mails in evidence, and that Mr. Levine never offered her RH's files, WS had little relevant evidence to give. Alan Page, the trustee in bankruptcy, testified as to the rights and obligations of a bankrupt.

FINDINGS

24. As indicated above, the panel found RH not credible in matters pertaining to himself. He appeared to wish to assist Mr. Levine and present himself in the best possible light, without a clear understanding of how to do so. His testimony was contradictory, and inconsistent with his statements to the investigator. One example of that inconsistency is his response to whether he had signed the engagement letter. Another is the degree of authorship or knowledge he had of the e-mails sent from his account. However, this finding as to the credibility of RH had no impact on the panel's ultimate findings.

25. The panel also found portions of Mr. Levine's testimony self-serving and incapable of belief. One example of this is his professed concern with third party liability. This concern was not raised to the investigator. Nor is it logical or consistent. Mr. Levine testified he was worried he had associated himself with false documents, namely RH's tax return. Yet the first time it appears he asks RH about the alleged false statement is more than a week after he states he will turn RH's records over to CRA. Further, he is warned by RH's lawyer that he has no obligation to assist CRA in such a complaint or investigation. Finally, the return was filed based on information provided to him by RH that it would seem he neither doubted nor had reason to doubt at the time. Mr. Levine is an experienced chartered accountant. He must have known he had attracted no liability by his actions. As well, Mr. Levine would have the panel believe he was acting as he believed he should in providing good advice to RH. That assertion is not borne out by the words or the tone of the e-mails. He did nothing to truly explain to RH what concerns he says he had at the time, or what alternatives or guidance he was suggesting to RH.

for going forward. He did not attempt to use registered mail to ensure that he was communicating with and fully relating his concerns to RH. Rather these matters, to the extent he did consider them at the time, were used to further his collection efforts.

26. A number of attempts were made to characterize this matter as one of bankruptcy law. It is not. Mr. Levine has admitted to writing and sending a number of e-mails to the address of his client, RH. He intended RH to receive those e-mails. The e-mails are the basis for the charge.

27. Mr. Levine himself has described these e-mails as "collection bluster", and insists he would never have taken the actions he states he would take in them. That is not relevant.

28. Nor is it relevant whether RH had acted fraudulently, either towards Mr. Levine, or others, or whether Mr. Levine owed a duty of confidentiality to RH, and the nature of that duty.

29. The issue for consideration is whether, on the evidence, it has been proven that Mr. Levine breached Rule 201.1 and, if so, whether that breach constituted professional misconduct. Therefore, the panel focussed on the wording of the Rule (and the charge) to determine whether Mr. Levine "failed to act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest."

30. It is significant that there was not one communication but rather a multiple series of e-mails between Mr. Levine and RH's address, with the inclusion of other persons, between September 15 and October 8, 2008.

31. These e-mails taken all together and in the context of the other evidence provided are determined by the panel to be:

- Primarily for the purpose of collecting the outstanding debt with RH; and
- Threatening in nature especially in context of the sophistication of the intended recipient with respect to business matters and his position under the law, of the threat and the intended implication of the threats that implied:
 - Tax reassessments
 - CRA investigations and possible prosecution
 - Disclosure of information to third parties (WS's lawyer through WS, and customers at new store).

32. In making this finding, the panel considered, among others, the following factors:

- The escalation of the nature of the threats throughout the series of e-mails
- That the e-mails took place over a long period of time, so that it was not possible to think of the exchange as one angry outburst.

33. The panel also finds the e-mails (and ones sent to others such as RH's lawyer) were inappropriate because they contained falsehoods. They were inappropriate, as well, in that they were copied or sent directly to others not part of the client engagement. This is evidence of Mr. Levine's willingness to follow through with the threats and an intent to cause damage to the good character of RH.

34. The panel finds these e-mails do breach Rule 201.1. Mr. Levine went far beyond appropriate professional behaviour in his attempts to collect his fees. Further, the breach constitutes professional misconduct. It is not an isolated or single incident, but rather an escalation over a period of time, culminating in a threat to ruin RH professionally and personally. The statements made by Mr. Levine can only have the effect of tarnishing the good reputation of the profession and consequently diminishing its ability to serve the public. The charge has been proven.

35. While it is important to remember that Mr. Levine was charged with a single count of professional misconduct arising from a breach of Rule 201.1, the panel also considered each particular, and finds they each were proven and support the charge and finding.

36. With respect to the first particular, Mr. Levine did threaten to release information of RH to third parties, in particular to WS and CRA. The purpose in providing information to WS and her lawyer is to create problems; its potential impact on the Family Court proceedings is apparent from the response by RH's lawyer pleading with him not to. The angst in the lawyer's e-mails is palpable. Similarly the impact of a CA sending to CRA unrequested information contrary to filings, or casting doubt on the veracity of previously submitted documents, would likewise be threatening if only to create additional questions and necessitate professional fees to refute. Threatening such action in the course of collecting fees is unprofessional.

37. The panel does not believe that Mr. Levine thought he had a duty to CRA to amend the returns of CCC and RH. His information "at the time" he prepared those returns had been acceptable to him and information he had access to later would not suggest that "at the time" he should have believed otherwise. Further, he never did receive proof that the returns were incorrect, he only inferred this from hearsay about where the proceeds of disposition of the sale of the business had gone. Further, his threat was not to amend the returns but to provide information to CRA that would cause them to reassess and perhaps prosecute RH. This implies something more serious than amending a tax return. Mr. Levine, in his e-mails, specifically references the possibility of a CRA audit and other consequences. This is a threat. Again, this tactic in the course of collecting fees is not professional.

38. The threats to pursue criminal action against RH are clear in the e-mails. Even now RH believes he is under the cloud of potential prosecution in criminal courts. From the evidence, the threat was made to further Mr. Levine's efforts to collect his fee and the implication is that, if the fees were collected, the threat would go away. This communication is unprofessional.

39. Mr. Levine's poor business practices left him open to a situation that exposed him to financial risk of a bad debt. He was in that position before he took on the additional work for CCC in 2008, and additional work he undertook to complete in 2008 compounded his problem. He was taken advantage of in that he undertook to complete work for an undischarged bankrupt and CCC, a company in receivership, without fully understanding the risks, and he was entitled under the law to know his position. This certainly made his financial risk more severe but was not the entire cause of it. These are mitigating circumstances that the panel has taken in to consideration. It is unfair for a professional to be so abused. But these circumstances do not relieve Mr. Levine of his responsibility to act in a professional manner and the panel cannot condone a protracted campaign using the tactics used by him to rectify his situation. The standard of conduct for Mr. Levine was much higher and he failed to meet that standard.

DECISION

40. After deliberating, the panel made the following decision:

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Stephen Lorne Levine guilty of the charge.

SANCTION

41. Ms. Hersak, for the Professional Conduct Committee, submitted that an appropriate sanction would include: a written reprimand; a fine in the amount of \$7,500; a specified professional development course; and publicity. She also sought costs of \$17,000, representing 50% of the costs incurred in the investigation, prosecution and hearing of the matter.

42. Ms. Hersak characterized the conduct of Mr. Levine as vindictive, and noted his stated intention to cause harm to RH if he did not comply with Mr. Levine's demands. In aggravation, she drew the panel's attention to: Mr. Levine's threats to release information obtained in the course of a client relationship; that RH was a long-standing client; that the threats were made in writing and disseminated to third parties; that the threats were serious; that there was a breach of trust; and that the threats were made to further a collection, when there were other means available.

43. In mitigation, Ms. Hersak listed Mr. Levine's cooperation, the fact he has no discipline history, and his expressions of remorse.

44. Mr. Hersak urged the panel to consider the principles of general deterrence, specific deterrence and rehabilitation. In particular, she submitted that a clear message must be sent that the use of threats to collect a debt will not be tolerated, so that the public trust in the integrity of the profession will be maintained.

45. Mr. Jaffe submitted that Mr. Levine had been the victim of fraud and chicanery, and subjected to horrific behaviour by RH, and that these factors should be considered very significant mitigation. He urged the panel to consider only nominal fine and costs.

46. With respect to the fine, he submitted it was not necessary for general deterrence, and that the circumstances of the case militated against a substantial quantum.

47. With respect to costs, he submitted it was inappropriate to include amounts not actually incurred, and exhorted the panel to disallow any amount for the prosecutor or tribunal counsel, as they were both employees of the Institute. He further submitted that the investigation costs should be greatly reduced, as there was no evidence the investigator had used his time wisely. Rather, Mr. Levine had been poked and prodded, and would not react the same way in the future.

48. Mr. Levine made a statement, and provided details of his financial situation. He also asked that publicity not be ordered, as there was no risk to the public or the profession from his conduct.

ORDER

49. After deliberating, the panel made the following order:

IT IS ORDERED in respect of the charge:

1. THAT Mr. Levine be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Levine 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. Levine be and he is hereby required to complete, by paying for and attending in its entirety, on or before July 1, 2010, the following professional development course made available through the Institute:
 - (a) Staying Out of Trouble
 or, in the event the course listed above becomes unavailable, the successor course which takes its place.
4. THAT notice of this Decision and Order, disclosing Mr. Levine's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to all members of the Institute;
 - (b) to the Public Accountants Council for the Province of Ontario;
 - (c) to all provincial institutes/Ordre,
 and shall be made available to the public.

IT IS FURTHER ORDERED:

5. THAT Mr. Levine be and he is hereby charged costs fixed at \$8,500 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.

AND IT IS FURTHER ORDERED:

6. THAT in the event Mr. Levine fails to comply with any of the requirements of this Order, he shall be suspended from the rights and privileges of membership in the Institute and his public accounting licence shall be suspended until such time as he does comply, provided that he complies within six (6) months from the date of his suspension, and in the event he does not comply within the six (6) month period, he shall be expelled from membership in the Institute and his public accounting licence shall be revoked, and notice of his expulsion and licence suspension and revocation, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Levine's practice. All costs associated with the publication shall be borne by Mr. Levine and shall be in addition to any other costs ordered by the committee.

REASONS FOR SANCTION

50. The panel took into consideration that Mr. Levine has no discipline history. The panel concluded this was an isolated matter and not indicative of broader transgressions. Mr. Levine appears to have learned from this matter. He is capable of, and is likely already well on his way toward, rehabilitation.

51. The panel also concluded that Mr. Levine has been wronged, and taken advantage of, and that he was in a difficult situation unfamiliar to him at a time when he was dealing with onerous personal matters. He did not actually follow through with any of his threats; however, the behavior in question took place over several weeks. This was not a matter of a momentary lapse in judgment.

52. This was not a quiet, confidential, conversation between CA and client, but rather an exchange involving a lawyer and family members not otherwise party to the transaction, and so this matter has had an impact on the public. The panel also considered that the circumstances of this matter, that is the use of e-mail which lends to the creation of a dialogue that is less thought out, more public and much more susceptible to misunderstanding, was the medium used here. It is important that this matter be heard and that other CAs are made aware of the ease with which transgressions in this medium can lead to a disciplinary matter.

53. A written reprimand, fine and prescribed course are necessary sanctions to have a rehabilitative and deterring impact on Mr. Levine. Neither a suspension nor expulsion would be appropriate. A fine of \$5,000 is at the lower end of the range in relation to other fines for similar matters, but it is large enough to meet the general deterrence purpose of sanctions. And the panel took into consideration that Mr. Levine indicates that he is currently under a financial strain and so will have some difficulty in dealing with a financial sanction.

54. Publicity has often been called the single greatest deterrent, both for the member found guilty and for other members of the profession who might otherwise be tempted to act in a similar manner. The conduct in this case is serious. Regardless of any provocation, Mr. Levine threatened a client, and exposed that client's affairs to a large number of third parties for the purpose of lending weight to his threats. That the communication was by way of e-mail rather than a more formal form of communication does not excuse or lessen the conduct. All CAs who use e-mail must use it prudently and professionally. Professional standards apply to all communications.

55. Mr. Levine must bear a portion of the costs of this proceeding. It is his conduct which made the proceeding necessary. His portion has been reduced to approximately 25% of the costs incurred, not because the panel agreed with the submissions of his counsel, as it does not, but because of Mr. Levine's financial circumstances and the totality of the sanction.

56. Given the proliferation of informal electronic communications, and the lack of care with which they are used, it is crucial that every member of the profession understand the professionalism expected and required of them.

DATED AT TORONTO THIS 18th DAY OF OCTOBER 2010
BY ORDER OF THE DISCIPLINE COMMITTEE

R.J. ADAMKOWSKI, CA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

J.B. BARRACLOUGH, FCA
P.A. BUSCH, CA
R.H. CARRINGTON (PUBLIC REPRESENTATIVE)
D.G. WILSON, CA