

### **Terence A. Burrell: Summary, as Published in *CheckMark***

**Terence A. Burrell**, of Sarnia, was found guilty of a charge under Rule 203.2 of failing to cooperate in the attempted inspection of his practice. Mr. Burrell failed to cooperate with practice inspection until after his failure to cooperate was referred to standards enforcement. When he did provide the information required, a satisfactory practice inspection was completed. Mr. Burrell was fined \$3,000 and charged costs of \$1,000.

## **CHARGE(S) LAID re Terence A. Burrell**

The Professional Conduct Committee hereby makes the following charge against Terence A. Burrell, a member of the Institute:

1. THAT the said Terence A. Burrell, in or about the period February 28, 2002 to September 16, 2002, failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct a practice inspection, contrary to Rule 203.2 of the rules of professional conduct.

Dated at Cornwall, Ontario this 18th day of December, 2002.

R. A. JOHNSTON, FCA - DEPUTY CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

## **DISCIPLINE COMMITTEE re Terence Alvin Burrell**

**DECISION AND ORDER IN THE MATTER OF:** A charge against **TERENCE ALVIN BURRELL, CA**, a member of the Institute, under **Rule 203.2** of the Rules of Professional Conduct, as amended.

**DECISION AND ORDER MADE MARCH 26, 2003**

### **DECISION**

THAT, having seen and considered the evidence, the Discipline Committee finds Terence Alvin Burrell guilty of the charge.

### **ORDER**

IT IS ORDERED in respect of the charge:

1. THAT Mr. Burrell be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Burrell be and he is hereby fined the sum of \$3,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Burrell be and he is hereby charged costs fixed at \$1,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Burrell'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; and
  - (c) by publication in *CheckMark*.
5. THAT in the event Mr. Burrell fails to comply with any of the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within this three (3) month period, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in the *Sarnia Observer*.

DATED AT TORONTO THIS 28TH DAY OF MARCH, 2003  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

## **DISCIPLINE COMMITTEE re Terence Alvin Burrell**

**REASONS FOR DECISION AND ORDER IN THE MATTER OF:** A charge against **TERENCE ALVIN BURRELL, 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 MARCH 26, 2003**

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on March 26, 2003 to hear evidence concerning a charge brought by the professional conduct committee against Terence Alvin Burrell.
2. The professional conduct committee was represented by Ms. Barbara Glendinning. The member was present without the benefit of legal counsel, and acknowledged that he had been advised of his right to be represented by counsel prior to the hearing.
3. The decision and the order of the discipline committee were made known at the hearing on March 26, 2003. The formal, written decision and order was signed and sent to the parties on March 28. These reasons, given in writing pursuant to Bylaw 574, set out the charge, the decision and the order, as well as the reasons of the discipline committee.

### **DECISION ON THE CHARGE**

4. The charge made against Mr. Burrell dated December 18, 2002 reads as follows:

THAT the said Terence A. Burrell, in or about the period February 28, 2002 to September 16, 2002, failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct a practice inspection, contrary to Rule 203.2 of the rules of professional conduct.
5. Mr. Burrell entered a plea of not guilty to the charge.

### **The Case For The Professional Conduct Committee**

6. Ms. Glendinning began the case for the professional conduct committee by filing an affidavit of Mr. Grant Dickson, FCA, director of practice inspection, and an affidavit of Ms. Joanna Maund, FCA, director of standards enforcement, both sworn January 16, 2003. Attached to Mr. Dickson's affidavit as an exhibit was a document brief which contained the relevant correspondence between the Institute and Mr. Burrell which are referred to in these reasons. Mr. Burrell did not object to these affidavits being put in evidence and did not ask to cross-examine on them.
7. Ms. Glendinning indicated that there was a third affidavit to which Mr. Burrell did object, and proposed that it be dealt with after the panel had reviewed the affidavits already filed.

8. The evidence was that Mr. Burrell's practice was selected for a practice inspection and he was notified of this by a letter from Mr. Dickson dated January 31, 2002. He was asked to complete a questionnaire and checklist and return it to the Institute by February 28, 2002. Mr. Burrell did not send the requested information or otherwise respond to the letter.

9. A memorandum was sent to Mr. Burrell by facsimile on March 26, 2002 by Mr. Andrew Downes, a practice inspection administrator, again requesting that Mr. Burrell submit the material and asking that he do so by no later than April 5, 2002. The requested material was again not sent.

10. According to Mr. Dickson's affidavit, Mr. Downes spoke with Mr. Burrell by telephone on May 2, 2002, and was told by Mr. Burrell that the requested information would be sent to the Institute by May 10, 2002. It was not.

11. On July 23, 2002, Mr. Dickson wrote to Mr. Burrell and referred to the letters of January 31 and March 26, as well as to the telephone conversation of May 2, and to a telephone message left with Mr. Burrell's assistant on July 5. His letter specifically required a written reply on or before August 6, 2002 in accordance with Rule 104 of the rules of professional conduct, and notified Mr. Burrell that failure to respond as requested would result in a referral of the matter to the professional conduct committee.

12. The requested information was not received. In fact, there was no reply to Mr. Dickson's letter of July 23, 2002. Mr. Dickson referred the matter to the professional conduct committee by making a complaint that Mr. Burrell had failed to respond to letters from the practice inspection area and had failed to provide requested information.

13. On August 26, 2002, Ms. Maund, the director of standards enforcement, wrote to Mr. Burrell advising him that a complaint had been received from Mr. Dickson and that the professional conduct committee wished to commence an investigation. The letter included a document entitled "Complaints Investigation and Disciplinary Procedures", and stated that Mr. Burrell was required to reply in accordance with Rule 104 on or before September 16, 2002. The letter also included this paragraph:

In view of the provisions of the rules of professional conduct, and in particular Rules 104 and 203.2, you are invited to provide any comments and information you wish considered by the professional conduct committee in its investigation of this matter.

14. Mr. Burrell's response arrived at the Institute by facsimile on September 16, 2002 at 8:25 p.m. according to the date and time of receipt printed on the document, and included the questionnaire and checklist which had originally been requested by Mr. Dickson in his letter of January 31, 2002.

15. Mr. Burrell was then asked by practice inspection to send certain specified files to the Institute for inspection. Mr. Burrell did not send the files by October 9, 2002 as requested, but finally did a week later, whereupon the practice inspection was completed and Mr. Burrell's files were found to be satisfactory.

## **Objection To The Admission Of Proposed Evidence**

16. When the discipline committee finished reviewing the affidavits and correspondence filed, Ms. Glendinning asked that a supplementary affidavit of Joanna Maund, sworn March 7, 2003, be admitted into evidence. Mr. Burrell objected.

17. Ms. Glendinning said the evidence contained in the supplementary affidavit related to past instances in which Mr. Burrell had failed to cooperate with practice inspection, and was relevant to the issue of whether or not his failure to cooperate in this instance was significant enough to constitute professional misconduct. He had, she advised, been put on notice on these prior occasions that prompt and full cooperation with practice inspection was required.

18. Mr. Burrell objected to the evidence on the basis that it was not relevant, and had not been disclosed to him as part of the professional conduct committee's case which he had to meet. He submitted that the relevant period of time for the purposes of this case was the period from February 28 to September 16, 2002, as stated in the charge, and that anything which took place before that period was not relevant and therefore not admissible into evidence. Further, it was his position that he sent the material requested by practice inspection on September 16, 2002, which was the due date specified in Ms. Maund's letter of August 26, and thus had cooperated and responded as required. As a result of this cooperation, he submitted, there was no basis upon which to introduce evidence relating to previous failures to cooperate. Mr. Burrell took strong objection to the prosecution's attempt to rely on letters in its possession that had not been included in the disclosure package which he had been provided relating to this case.

19. Ms. Glendinning submitted that Mr. Burrell knew of the letters attached to and referred to in Ms. Maund's supplementary affidavit, as they were letters which had been sent to him, and which he had acknowledged receiving. She also indicated that while the letters had not been included in the original disclosure package, Mr. Burrell had subsequently been advised, in accordance with the obligation to make continuous disclosure, that the letters would be tendered in evidence. Ms. Glendinning submitted that these factors entitled the prosecution to have the evidence admitted.

20. After the parties had made their submissions with respect to the admission of the affidavit, the panel deliberated and concluded that it would not receive the affidavit into evidence. It was not evidence which had been discovered subsequent to the laying of the charge. If it was an essential part of the professional conduct committee's case, it should have been included in the disclosure package sent to the member prior to the assignment hearing as part of the case the member had to meet. As it had not been so disclosed, the panel refused to admit it into evidence.

## **Submissions With Respect To The Charge**

21. Ms. Glendinning submitted that the evidence before the panel was not only clear and cogent but acknowledged and beyond dispute. Further, she pointed out that Mr. Burrell had given no explanation for his failure to provide the questionnaire and checklist as requested. She acknowledged that he had finally sent the required information when he had received a letter from the director of standards enforcement, but submitted that sending the material on the evening of September 16, 2002 was not cooperation as required by Rule 203.2.

22. Mr. Burrell submitted that the rule required cooperation but did not stipulate a time frame within which the cooperation was required. He said that the various time deadlines imposed by the Institute were arbitrary, that the practice inspection letter of January 31 and memo of March 26, 2002 arrived at busy times, and that it was simply unreasonable to expect a sole practitioner to provide information to the Institute early in May following the April 30 deadline for filing income tax returns. More importantly, he submitted that the time deadline for his cooperation had been extended with each communication from the Institute, and that he met the ultimate deadline of September 16, 2002 imposed by the director of standards enforcement. He pointed out that the practice inspection had been completed within the June 1 to November 30, 2002 time frame envisaged in Mr. Dickson's original letter of January 31, 2002, that the inspector had determined that no further action was required, and that his practice had been put back into the normal rotation for practice inspection.

### **The Decision**

23. In our deliberations we identified two issues, the first being whether or not the allegation set out in the charge had been proven. The second issue identified, in the event we found the allegation had been proven, was whether or not Mr. Burrell's conduct fell so far below the standard required of a member that it constituted professional misconduct.

24. Rule 203.2 reads as follows:

A member, student or firm shall co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct:

- (a) a practice inspection; or
- (b) an investigation on behalf of the professional conduct committee.

25. As Mr. Burrell pointed out, the rule does not stipulate how long a member has to cooperate. In our view, a rule that stipulated a time period for cooperation would likely be arbitrary and unreasonable. Whether or not a member cooperated in any particular case will be a question of fact, and the time frame within which a member must cooperate will depend on a number of factors. In this case, those factors include the nature of the request or demand made of Mr. Burrell, the period of time practice inspection gave him to provide the requested information, and the length of time Mr. Burrell took to finally comply.

26. The information requested from Mr. Burrell was readily available to him. It was not an unreasonable or onerous request. The lengths of time stipulated in the three written requests to Mr. Burrell – four weeks pursuant to Mr. Dickson's letter of January 31, 2002; ten days pursuant to Mr. Downes' memo of March 26, 2002; and fourteen days pursuant to Mr. Dickson's letter of July 23, 2002 – were all more than adequate lengths of time for Mr. Burrell to provide the information requested.

27. Mr. Burrell's defence is not that he cooperated generally, or throughout the period, but rather that the charge fails because he did provide the requested information on the last day of the period set out in the charge.

28. Mr. Burrell's submission that he provided the information within the deadline stipulated by Ms. Maund in her letter of August 26, 2002 is not accurate. Ms. Maund did not extend a deadline previously stipulated by practice inspection for Mr. Burrell to provide the required practice inspection information, but rather set a deadline for Mr. Burrell to respond to the complaint that had been made to the professional conduct committee as a result Mr. Burrell's failure to provide the required information to practice inspection.

29. But that does not dispose of Mr. Burrell's point, or his defence to the charge. The issue is whether or not providing the required practice inspection information on September 16, 2002 amounts to cooperation "in or about the period February 28, 2002 to September 16, 2002", as stipulated in the charge.

30. We do not think providing the requested information on the last day set out in the charge constitutes cooperation in the period February 28, 2002 to September 16, 2002. No doubt Mr. Burrell would have a defence if the charge read that he failed to cooperate on or before September 16, 2002. But that is not the charge. There are 200 days in the period February 28 to September 16, 2002, and providing the information on the final day of the period does not constitute cooperation in the period as the rule requires. The failure to cooperate for 199 days was not cured by providing the information on the 200th day.

31. Having decided that Mr. Burrell's failure to cooperate was a breach of Rule 203.2, the next issue was whether or not this breach amounted to professional misconduct. We concluded that the failure to provide the required practice inspection information by August 6, 2002, which was the final deadline date stipulated by practice inspection, fell so far short of the standard of conduct required of members of the Institute that it did amount to and warranted a finding of professional misconduct.

32. Accordingly, when the hearing reconvened, the chair read the following decision into the record:

#### DECISION

THAT, having seen and considered the evidence, the Discipline Committee finds Terence Alvin Burrell guilty of the charge.

#### **ORDER AS TO SANCTION**

33. Ms. Glendinning requested that the discipline committee reprimand Mr. Burrell, impose a fine of \$3,000, charge him costs of \$1,000, and make the usual order as to notice including by way of publication in *CheckMark* disclosing Mr. Burrell's name.



34. Ms. Glendinning proposed to tender as evidence on the issue of sanction the affidavit of Ms. Maund annexing the three previous admonishment letters which the panel had refused to accept earlier as evidence on the charge. She submitted that the fact that Mr. Burrell had been admonished on three previous occasions by the professional conduct committee for his failure to cooperate with practice inspection was relevant to the issue of sanction in this case. Further, she submitted that the evidence was not controversial, and that Mr. Burrell had acknowledged receiving the three admonishment letters sent to him in 1995, 1997 and 1998, respectively.

35. Mr. Burrell objected to the submission of the affidavit of Ms. Maund setting out the three admonishments. He submitted that it had been his understanding that the letters of admonishment were not formal in the sense that a record would be kept of them, and that as they related to a period of time prior to the period to which the present charge related they were accordingly not relevant to the issue of what sanction should be imposed on him in this case.

36. Upon deliberation, the panel concluded that the letters of admonishment were relevant to the issue of sanction, and therefore admitted the affidavit as an exhibit.

37. Mr. Burrell submitted that a fine of \$3,000 was excessive and that a fine of \$1,500 would be more appropriate. He also submitted that as a member of the City Council for Sarnia, notice in *CheckMark* would be particularly damaging to him as it would make his misconduct public knowledge, which was not required as he had done nothing to put the public at risk. He pointed out that his practice inspection had been successfully completed with no practice difficulties having been uncovered. In Mr. Burrell's view, the public had no interest in his dispute or conflict with the Institute.

38. Finally, with respect to costs, Mr. Burrell submitted that the "lion's share" of the hearing had been taken up with the issue of Ms. Glendinning's attempt to file the second affidavit of Ms. Maund in support of the charge, and that as the affidavit had been rejected by the panel at that stage of the proceeding, costs should not be awarded against him.

39. After deliberation, the hearing reconvened and the chair summarized the provisions of the order. The formal order was sent to Mr. Burrell on March 28, 2003, and reads as follows:

#### ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Burrell be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Burrell be and he is hereby fined the sum of \$3,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.

3. THAT Mr. Burrell be and he is hereby charged costs fixed at \$1,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Burrell'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; and
  - (c) by publication in *CheckMark*.
5. THAT in the event Mr. Burrell fails to comply with any of the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within this three (3) month period, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in the *Sarnia Observer*.

### **Reprimand**

40. In keeping with past cases, the panel ordered that the member be reprimanded in writing by the chair of the hearing, to stress to him the serious nature of the offence and the unacceptability of his conduct.

### **Fine**

41. While this is Mr. Burrell's first conviction for failing to cooperate with practice inspection, it is the fourth time that his untimely response to practice inspection has resulted in a referral to the professional conduct committee. It is clear that Mr. Burrell needs to be specifically deterred from failing to cooperate in the future. On the face of it, a \$3,000 fine would not seem sufficient to achieve this purpose. However, the professional conduct committee, which had some knowledge of Mr. Burrell's financial affairs, requested a fine in this amount, and the panel did not wish to set a higher fine an inability to pay which would result in the member's expulsion from membership. Further, while the fine in this case may seem low, the panel believes its overall sanctions order is such that Mr. Burrell will realize that if there is a repetition of his failure to cooperate which comes before the discipline committee in future and results in another finding of guilty, the sanction imposed will be substantially more onerous. Accordingly, we concluded that in the circumstances of this case a fine of \$3,000 was acceptable.

42. Mr. Burrell's objection that past admonishment letters should not be introduced in evidence against him was unfounded, particularly as all three letters specifically stated that "the professional conduct committee does maintain an informal record of admonishments which will be referred to should you be involved again in a matter before the committee". Mr. Burrell had been given three prior warnings and those warnings were relevant to the issue of sanction in this case. In retrospect, the decision not to charge Mr. Burrell for the second or third failure to cooperate simply postponed what now appears was inevitable. We very much hope this order will rehabilitate Mr. Burrell by specifically deterring him in future from paying so little regard to requests for information from his governing body.

43. The fine is also imposed as a general deterrent, with the intention of educating other members as to the consequences of failing to cooperate with the regulatory processes of the Institute.

### **Notice**

44. This panel agreed with previous panels of the discipline committee that publishing notice of its decision and order in *CheckMark* disclosing the disciplined member's name is likely the component of the order that best satisfies the principles of general and specific deterrence.

45. The panel understood Mr. Burrell's point that as a member of the City Council in Sarnia it is possible that the notice in *CheckMark* might come to the attention of the local media and make front page news. However, the discipline committee in *Waller* rejected the idea of withholding publication in a newspaper under Bylaw 575(3) for members who practice in smaller cities or towns because of the added impact such a notice could have in smaller cities and towns. While publication in *CheckMark* is not publication in a newspaper, we think the same principle is applicable. Publication of the notice in *CheckMark* disclosing the member's name should not vary depending on whether the member lives in Toronto or a smaller city, or whether or not the member holds public office.

46. Chartered accountancy is a self-governing profession. It is not possible for the Institute to carry out its regulatory functions if members behave as Mr. Burrell has. Notice disclosing his name serves as both a specific deterrent to Mr. Burrell and a general deterrent to other members who might otherwise not clearly understand the importance of cooperation with the Institute. In this case, both specific and general deterrence are fundamentally important to the imposition of sanction and both require that Mr. Burrell's name be disclosed.

47. Mr. Burrell submitted that his failure to cooperate with practice inspection did not create a risk to the public, and that the conduct in question involved only the Institute and himself. Accordingly, he took the position that publication of his name was unwarranted and would be unfair. We disagree. Whether a member cooperates with the Institute is not a matter relevant only to the Institute and the member. The public is entitled to the confidence in knowing that a person who holds out as a chartered accountant adheres to the standards of practice and conduct expected and required of members of this profession. While not unsympathetic to Mr. Burrell's concern, the fact

remains that he received and failed to take heed of three previous warnings to cooperate.

### **Costs**

48. The costs of this hearing, even excluding the time it took to deal with the evidence to which Mr. Burrell objected, far exceeded \$1,000. The professional conduct committee requested only \$1,000 in light of Mr. Burrell's personal circumstances. We are of the view that the costs to the Institute of the prosecution and hearing should never have been incurred because Mr. Burrell should have learned from his past mistakes and not have let this matter proceed as far as it did. There was no question in the panel's collective mind that ordering Mr. Burrell to pay costs of \$1,000 was entirely appropriate and proper.

DATED AT TORONTO THIS 15TH DAY OF JULY, 2003  
BY ORDER OF THE DISCIPLINE COMMITTEE

L.P. BOOKMAN, CA – CHAIR  
THE DISCIPLINE COMMITTEE

### MEMBERS OF THE PANEL:

D.M. FORTNUM, FCA  
B.L. HAYES, CA  
G.R. PEALL, CA  
S.J. MURRAY (Public representative)