

Thomas Haar: Summary, as Published in *CheckMark*

Thomas Haar, of Oshawa, was found guilty of a charge of professional misconduct, under Rules 201, arising from his conviction under the *Income Tax Act* of conspiring with others, including clients, to willfully evade the payment of taxes. The discipline committee ordered that he be expelled from membership in the Institute. Upon Mr. Haar's appeal, the appeal committee confirmed the discipline committee's decision and order. Mr. Haar has been expelled from membership.

Mr. Harr was expelled from the Institute on February 12th, 1992, however, he was reinstated to MEMBERSHIP IN GOOD STANDING on July 25th, 1995.

CHARGE(S) LAID re Thomas Haar

The Professional Conduct Committee hereby makes the following charge against Thomas Haar, CA, a member of the Institute:

1. THAT, the said Thomas Haar failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that, on or about the 4th day of July 1990 at the City of Oshawa in the Judicial District of Durham, he was convicted of a criminal offence namely that he unlawfully did, between the 27th day of February, 1984 and the 11th day of October, 1987, in the Town of Whitby, in the Judicial District of Durham and elsewhere in Ontario, conspire and agree with Grant Menzies Motors (1976) Limited, the one with the other and with Delbert Sorrier and a person or persons unknown to wilfully evade the payment of taxes imposed by the *Income Tax Act* and R.S.C. 1952, c.148, as amended, contrary to Section 239(1)(d) of the said *Income Tax Act* and did thereby commit an offence contrary to Section 239(1)(e) of the said *Act*, all of which is contrary to Rule 201 of the rules of professional conduct as amended.

DATED at Toronto this 23rd day of January, 1991.

R.G. LONG, CA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Thomas Haar

DECISION AND ORDER IN THE MATTER OF: A charge against THOMAS HAAR, CA, a member of the Institute, under Rule 201 of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE JUNE 21, 1991

DECISION

THAT, having seen and considered the evidence, THE DISCIPLINE COMMITTEE FINDS Thomas Haar guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Haar be reprimanded in writing by the chairman of the hearing.
2. THAT Mr. Haar be and he is hereby expelled from membership in the Institute.
3. THAT notice of this Decision and Order, disclosing Mr. Haar's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario;
 - (c) to the Canadian Institute of Chartered Accountants; and
 - (d) to the local press in Oshawa and Whitby.
4. THAT Mr. Haar be and he is hereby ordered to surrender his certificate of membership in the Institute to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws.

DATED AT TORONTO, THIS 26th DAY OF JUNE, 1991
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Thomas Haar

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: A charge against THOMAS HAAR,, CA, a member of the Institute, under Rule 201 of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE JUNE 21, 1991

These proceedings before a panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on June 21, 1991.

Mr. Paul Farley attended on behalf of the professional conduct committee and Mr. Haar attended with his counsel, Mr. David Porter.

The professional conduct committee had laid one charge of professional misconduct against Mr. Haar, under Rule of Professional Conduct 201. Mr. Haar pleaded guilty to the charge. The document brief filed as an exhibit clearly demonstrated that Mr. Haar was convicted of the criminal offence that he conspired and agreed with others, including clients, to wilfully evade the payment of taxes imposed by the Income Tax Act. Based upon this information, and the member's plea of guilty, the discipline committee found Mr. Haar guilty of the charge.

The committee then heard evidence and submissions as to sanction, including five character witnesses and eight character reference letters on behalf of Mr. Haar. Presented during the submissions with respect to sanction was a brief of authorities which included two past cases heard by the discipline committee, one being the recent case against George Donald White, for which the written reasons had not yet been released. The committee was advised that Mr. White had been found guilty and that, as part of the sanctions, he had been suspended, not expelled. The authorities also included two appeals to the courts from decisions of the discipline committee of the College of Physicians and Surgeons of Ontario. The committee considered each of these cases thoroughly in its deliberations and also referred to other precedents, including the discipline committee's decision with respect to Andrew Adam Ferri made on June 26, 1987, and upheld by the appeal committee in its decision of January 20, 1989.

After considering the submissions and deliberating, the committee made the following order:

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Haar be reprimanded in writing by the chairman of the hearing.
2. THAT Mr. Haar be and he is hereby expelled from membership in the Institute.
3. THAT notice of this Decision and Order, disclosing Mr. Haar's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario;

- (c) to the Canadian Institute of Chartered Accountants; and
- (d) to the local press in Oshawa and Whitby.

4. THAT Mr. Haar be and he is hereby ordered to surrender his certificate of membership in the Institute to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws.

In its determination as to the appropriate sanctions, the committee had regard to the considerations set out below.

While the committee gave due regard to Mr. Haar's witnesses and letters of reference, it could not ignore the moral turpitude involved in the offence of tax evasion, nor could the committee ignore the fact that Mr. Haar had caused clients to issue fictitious invoices and agreements to support falsified claims. As well, the committee recognized that this matter was not an isolated incident but took place over a number of years.

The committee is of the view that a reprimand is necessary as a specific deterrent to the member and to stress the unacceptability of his conduct as a chartered accountant.

In deciding upon expulsion, the committee gave consideration to the principles of general deterrence to the membership and specific deterrence to Mr. Haar, as well as the need to protect the integrity of the profession in the eyes of the public.

The principles of specific and general deterrence, as they apply to the protection of the public interest through the observance by all chartered accountants of professional and ethical standards and the maintenance of the good reputation and integrity of the profession, warranted Mr. Haar's expulsion from membership in the Institute.

Notice and publication of its decisions and orders, including disclosure of the member's name, is a well-established practice of the discipline committee, which it follows unless a persuasive reason not to is presented. No such reason was submitted in this case. To its usual order as to notice, the committee added the stipulation that the local press in Oshawa and Whitby be notified. This was determined to be appropriate as local area newspapers had run articles about Mr. Haar's criminal conviction, in which the member was identified as a chartered accountant.

DATED AT TORONTO, THIS 22nd DAY OF AUGUST, 1991
BY ORDER OF THE DISCIPLINE COMMITTEE

E.W. SLAVENS, FCA - CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

C.J. BURKE, FCA R.J. NOBES, FCA
L.W. RICH, CA
L.L. WORTHINGTON, FCA
A. CRANSTON (Public representative)

APPEAL COMMITTEE re Thomas Haar

IN THE MATTER OF: An appeal lodged by Thomas Haar, CA against the order of the discipline committee of the Institute of Chartered Accountants of Ontario (Institute), made on June 21, 1991, regarding Mr. Thomas Haar, CA a member of the Institute pursuant to *The Chartered Accountants Act* and the Bylaws pursuant to the Act.

These proceedings before a panel of the appeal committee of The Institute of Chartered Accountants of Ontario were convened on February 12, 1992.

Mr. Paul Farley attended on behalf of the professional conduct committee and Mr. Thomas Haar attended with his counsel, Mr. David Porter.

Mr. Porter, on behalf of Mr. Haar, appealed to the appeal committee from the order of the discipline committee made June 21, 1991 that provisions 2, 3, and 4 of the discipline committee's order be set aside and substituting therefore that Mr. Haar be reprimanded in writing by the chair of the hearing.

The panel of the appeal committee, after reviewing the documentation and hearing the submissions of all parties, confirmed the decision of the discipline committee made on June 21, 1991. The parties to the hearing were advised at the hearing that they would be notified by the secretary of the appeal committee as to the committee's decision. The parties to the hearing were also advised that written reasons would follow in due course.

BACKGROUND

The discipline committee on June 21, 1991 found Mr. Haar guilty of professional misconduct under Rule of Professional Conduct 201. Mr. Haar had pleaded guilty to said charge. The document filed as an exhibit to the discipline committee clearly demonstrated that Mr. Haar was convicted of a criminal offense that he had conspired and agreed with others, including clients, to wilfully evade the payment of income taxes imposed by the *Income Tax Act*.

The discipline committee heard evidence as to the submissions as to sanction including character witnesses and character reference letters on behalf of Mr. Haar. After considering the various submissions made at the discipline hearing, and after due deliberation the committee made the following Order:

It is ordered in respect of the charge:

- 1) That Mr. Haar be reprimanded in writing by the chair of the hearing.
- 2) That Mr. Haar be and he is hereby expelled from membership in the Institute.
- 3) That notice of the Decision and Order, disclosing Mr. Haar's name, be given after the Decision and Order become final under the Bylaws;
 - a) By publication in *Checkmark*
 - b) To the Public Accountants Counsel for the Province of Ontario;
 - c) To The Canadian Institute of Chartered Accountants; and
 - d) To the local press in Oshawa and Whitby.

- 4) That Mr. Haar be and is hereby ordered to surrender his certificate of membership in the Institute to the Registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the Bylaws.

Mr. Porter in his appeal stated that the grounds for appeal are as follows:

- 1) The discipline committee erred in that the disposition contained in the Order save and except for the granting of the reprimand in writing by the chair of the hearing was harsh and excessive in all of the circumstances;
- 2) The discipline committee erred by failing to pay due regard to the prior good conduct and exemplary career of the appellant.

The panel of the appeal committee after considering the submissions and deliberating confirmed the decision of the discipline committee held June 21, 1991 and denied the appeal by Mr. Haar.

The written reasons for this decision are set out below.

REASONS

Mr. Porter submitted that it was the duty of the appeal committee to determine whether the penalty was fit and if found to be unfit the decision should be varied. He submitted Mr. Haar pleaded guilty to save time and as an expression of remorse. He submitted that the errors made by Mr. Haar represented serious errors of judgement and that he assisted in the preparation of false documents. He submitted that the fine levied on Mr. Haar by the Courts for income tax evasion of \$150,000 plus the payment by Mr. Haar of \$7,500 on behalf of a client was a serious penalty already imposed on Mr. Haar and that the errors in judgement were out of character for Mr. Haar when considering his past exemplary behaviour.

He submitted that Mr. Haar had no personal motive but that he was helping an elderly inventor client and received no personal benefit except to the extent that he owned 3% of the shares of his client's company.

Mr. Porter referred to the Order of the discipline committee and submitted that no evidence was presented that Mr. Haar should be expelled for specific deterrence. He submitted that three additional errors were also made by the discipline committee. Firstly, there is a principle that a first offender should be treated lighter than a repeat offender as to sanctions. The appeal committee should look at all alternatives prior to application of the ultimate sanction of expulsion. Secondly, general deterrence should be balanced with rehabilitation. Mr. Porter submitted that the evidence that Mr. Haar is rehabilitable was ignored by the discipline committee. Lastly, the discipline committee erred in that general deterrence does not equate to expulsion. The substitution of along suspension is an adequate substitute for expulsion.

Mr. Porter then referred to a number of cases including Granatstein, Matheson, and issues of precedent dealing with the "norm".

In summarization, Mr. Porter submitted that he felt that an eight month suspension plus publication would be an adequate sanction as the appeal committee must consider rehabilitation. In answer to a question from the panel, Mr. Porter indicated that when Mr. Haar offered his resignation at the discipline committee hearing he was not aware that this was only normally granted to a member who was near retirement. Mr. Porter also submitted in answer to

a question from legal counsel to the panel that he believed that the decisions of Mr. Justice Cory in re "Stevens and the Law Society of Upper Canada" were now superseded by subsequent decisions.

Mr. Farley, on behalf of the professional conduct committee, submitted that the onus is on Mr. Haar to prove that the discipline committee made a mistake. In the opinion of the professional conduct committee, Mr. Haar received a just sanction and no errors were made. Mr. Farley submitted that the discipline committee in its deliberations clearly considered all of the areas as presented by Mr. Porter. Evidence had been introduced as to precedents. He submitted that Mr. Haar had been dishonest and had been convicted in Criminal Court and fined a substantial fine of \$150,000. The RCMP forensic review indicated a forgery on the part of Mr. Haar in changing a document. Mr. Haar was acting in his professional capacity as a chartered accountant and he induced clients to do illegal acts as co-conspirators. The discipline committee had already determined that this was a serious offence. A chartered accountant is relied upon by the public for honesty and integrity.

Mr. Farley submitted that precedents must act as a guide and that the Mr. Justice Cory decision has relevance in this instance. He submitted that the Goodman case was not applicable as the practitioner did not practice in Ontario and that the decision reached by the discipline committee in that case was reasonable under the special circumstances.

In the submission of Mr. Farley, there was full evidence of professional misconduct on the part of Mr. Haar and that the sanction imposed by the discipline committee was consistent with previous decisions of that committee. Mr. Farley also submitted that a message of general deterrence must be sent to all like minded members of the Institute.

He submitted that each case must be decided on its own facts and reviewed a number of cases cited by Mr. Porter and why they did not apply in this instance.

Mr. Farley then closed his submission by requesting that the appeal committee deny this appeal by Mr. Haar.

The appeal committee was of the view that it's responsibility in this matter was to make sure that the discipline committee correctly understood the principles of law and procedure which govern it and properly applied those principles to the facts of the particular the question of sanction the appeal committee gave due consideration to the reasons of Mr. Justice Cory in Re Stevens and the Law Society of Upper Canada. Knowing that imposing a sanction is a difficult matter the appeal committee saw that its task was to make sure that the principles which govern the imposition of sanction were understood and properly applied.

The appeal committee was also guided by the decision of "R. vs. Basha" (1980), 61 A.P.R. 23 Nfld. & PEI R. 286 at p. 299, which states

... a court of appeal should only interfere with a trial judge's discretionary powers as to sentencing if it is apparent that the judge has misapplied one or other of the accepted principles of sentencing, in all the circumstances of the case, with the result that the sentence imposed is outside the range of sentencing for that type of offence.

In cases such as Finkelman and Granatstein the principles of sentencing as it applies to publication also apply generally in this case. The discipline committee was seized with the task of balancing the issues of specific deterrence, general deterrence and rehabilitation and applying

these principles giving due consideration to the facts and the sentences imposed in similar cases.

In its deliberations, the committee discussed the impact and image that a CA must present to the public. The committee reviewed the various discipline cases and precedents, paying particular attention to the George White decision, in arriving at their determination.

APPLICATION OF THE GEORGE DONALD WHITE DECISION:

The committee felt that there was a distinct difference between this case and that of George Donald White.

- 1) Mr. White did not involve clients or other third parties although, like Mr. Haar, he did evade the payment of income taxes otherwise owing.
- 2) Mr. White did not forge or change any document.
- 3) Mr. Haar was guilty of professional misconduct while practicing as a chartered accountant whereas Mr. White was found guilty of professional misconduct in the filing of his personal income tax returns.

For the foregoing reasons, the committee agreed that while the charges against Mr. White were serious and warrant a long suspension, fine and loss of his Fellowship, those against Mr. Haar warranted a more severe sanction.

It was clear from the discipline committee's decision that it gave due regard to Mr. Haar's witnesses and letters of reference but yet could not ignore the moral turpitude involved in the offense of tax evasion, nor could the committee ignore the fact that Mr. Haar had caused clients to issue fictitious invoices and agreements to support falsified claims. As well the committee recognizes that this matter was not an isolated incident but took place over a number of years and included the submission of a forged document. It was also clear that the discipline committee gave consideration to the principles of general deterrence to the membership and specific deterrence to Mr. Haar as well as the need to protect the integrity of the profession in the eyes of the public. Consequently, the discipline committee and this committee feel that the facts warranted Mr. Haar's expulsion from membership in the Institute.

The appeal committee felt that maintaining and upholding of the Rules of Professional Conduct is an important function of our profession. It is an extremely serious matter when a CA in public practice gets his or her's clients involved in income tax evasion .

Accordingly, the panel agreed to uphold the decision of the discipline committee and deny the appeal from Mr. Haar.

SIGNED AT TORONTO, this 24th day of July, 1992

C. S. BARLTROF, FCA - CHAIR OF THE HEARING

Appeal Committee Members of the Hearing

J.M. Allinotte, FCA;

A. Brown;
W.G. Brown, FCA;
D.T. McClurkin, CA;
R.E.A. Parisi, CA

APPEAL COMMITTEE re Thomas Haar

ORDER OF THE APPEAL COMMITTEE IN THE MATTER OF: An appeal lodged by Thomas Haar, CA against the order of the discipline committee of the Institute of Chartered Accountants of Ontario (Institute), made on June 21, 1991, regarding Mr. Thomas Haar, CA a member of the Institute pursuant to *The Chartered Accountants Act* and the Bylaws pursuant to the Act.

ORDER

A panel of the appeal committee met on February 12, 1992, to consider an appeal lodged by Thomas Haar, CA against the decision and order of the discipline committee made on June 21, 1991.

Mr. Haar attended and was represented by his legal counsel Mr. David Porter. The professional conduct committee was represented by Mr. Paul Farley.

The appeal panel, after hearing the submissions of all parties and after reviewing the documentation that was before it makes the following order:

1. That the appeal filed on behalf of Mr. Haar be dismissed; and
2. That the decision and order of the discipline committee made on June 21, 1991 be confirmed in its entirety and the order of the discipline committee become effective immediately.

The parties were advised that written reasons for this order would follow.

DATED AT TORONTO this 18TH day of February, 1992.

P.G. SCHOFIELD - SECRETARY
APPEAL COMMITTEE