

Warren Ian Manis: Summary, as Published in *CheckMark*

Warren Ian Manis, of Toronto, was found guilty of two charges under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest. The misconduct arose from matrimonial litigation between Mr. Manis and his then wife, in which Mr. Manis was ordered in a judgment of the Ontario Superior Court of Justice to do certain things and to refrain from doing certain other things. He refused to comply with some of the terms of the judgment made against him, for which he was found in contempt of court and sent to jail. Mr. Manis was fined \$8,000 and suspended for twelve months, the suspension to commence upon the termination of his existing suspension for bankruptcy.

CHARGE(S) LAID re Warren Ian Manis

The Professional Conduct Committee hereby makes the following charges against Warren Ian Manis:

1. THAT, the said Warren Ian Manis, in or about the month of June, 2001, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he was found by a Justice of the Superior Court of Justice to be in contempt of that court, contrary to Rule 201.1 of the rules of professional conduct.
2. THAT, the said Warren Ian Manis, in or about the period October 30, 2000 through June 28, 2001, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he failed to obey orders made by Mr. Justice Lane of the Ontario Superior Court of Justice, contrary to Rule 201.1 of the rules of professional conduct.

Dated at Toronto, Ontario this 18th day of June 2002.

GERRY MILLS, CA – DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Warren Ian Manis

DECISION AND ORDER IN THE MATTER OF: Charges against **WARREN IAN MANIS**, a suspended member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE OCTOBER 10, 2002

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1 and 2, the Discipline Committee finds Warren Ian Manis guilty of charges Nos. 1 and 2.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Manis be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Manis be and he is hereby fined the sum of \$8,000, to be remitted to the Institute within nine (9) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Manis be and he is hereby suspended from the rights and privileges of membership in the Institute for a period of twelve (12) months, the suspension to commence upon the termination of his current suspension for bankruptcy.
4. THAT notice of this Decision and Order, disclosing Mr. Manis' name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in *The Globe and Mail* and the *National Post*.
5. THAT Mr. Manis surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date of the commencement of his suspension pursuant to paragraph 3 of this Order, to be held during the period of suspension and thereafter returned to Mr. Manis.
6. THAT in the event Mr. Manis fails to comply with any of the requirements of this Order, 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.

DATED AT TORONTO THIS 16TH DAY OF OCTOBER, 2002
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Warren Ian Manis

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **WARREN IAN MANIS**, a suspended member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE OCTOBER 10, 2002

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on October 10, 2002 to hear the charges brought by the professional conduct committee against Mr. Warren Ian Manis, a suspended member of the Institute.
2. Mr. Paul Farley represented the professional conduct committee. Mr. Manis attended with and was represented by his counsel Mr. Peter Cozzi.
3. The decision on the charges and the order as to sanction were made at the hearing, and the formal Decision and Order was issued on October 16, 2002. These reasons, given in writing pursuant to Bylaw 574, set out the charges, the decision, and the order, as well as the reasons of the discipline committee.

DECISION ON THE CHARGES

4. The notice of assignment hearing, notice of hearing and charges were entered as Exhibits 1, 2 and 3, respectively. The charges laid by the professional conduct committee dated June 18, 2002 read as follows:
 1. THAT, the said Warren Ian Manis, in or about the month of June, 2001, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he was found by a Justice of the Superior Court of Justice to be in contempt of that court, contrary to Rule 201.1 of the rules of professional conduct.
 2. THAT, the said Warren Ian Manis, in or about the period October 30, 2000 through June 28, 2001, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he failed to obey orders made by Mr. Justice Lane of the Ontario Superior Court of Justice, contrary to Rule 201.1 of the rules of professional conduct.
5. Mr. Manis entered a plea of guilty to both charges and confirmed his understanding that on the basis of his plea, and on that basis alone, he could be found guilty of the charges.
6. The case for the professional conduct committee was presented by way of a document brief of relevant documents, and an agreed statement of facts which referred to the documents. The agreed statement was signed by Mr. Manis on his own behalf and by Mr. Farley on behalf of the professional conduct committee.

7. After Mr. Farley gave an overview of the case for the professional conduct committee and filed the document brief and agreed statement of facts, the parties were excused and the panel reviewed the evidence and particularly the various decisions and reasons of the courts. When the parties returned, Mr. Farley advised that he had no other evidence to present. Mr. Cozzi advised that he did not intend to call evidence. After both counsel had made their submissions, the hearing adjourned while the panel deliberated.

The Relevant Facts

8. The misconduct in this case was very unusual. It arose from matrimonial litigation between Mr. Manis and his then wife. Mr. Manis refused to comply with some of the terms of a judgment of the Ontario Superior Court of Justice dated November 30, 2000, for which he was found in contempt of court and sentenced to jail for six months.

9. The judgment of the Superior Court followed an 18 day trial before Justice Lane, who did not find Mr. Manis to be a "candid or reliable witness". Justice Lane ordered Mr. Manis to arrange substitute security for the mortgage on the matrimonial home, which was conceded to be solely a debt of Mr. Manis. Further, Justice Lane ordered that until Mr. Manis made an equalization payment to Mrs. Manis and removed the mortgage from the matrimonial home, he was not to deplete his assets or remove them from the jurisdiction of the court without the consent of Mrs. Manis. Mr. Manis appealed the decision of Justice Lane, but he did not perfect that appeal and it was dismissed.

10. Mr. Manis did not comply with the order not to deplete his assets and to remove the mortgage. Counsel for Mrs. Manis brought an application to have Mr. Manis held in contempt for his failure to comply with the terms of the judgment. Justice O'Connell of the Superior Court heard the application and delivered his reasons orally on June 13, 2001. The reasons were transcribed and included in the document brief. Justice O'Connell found Mr. Manis in contempt of court and gave him 15 days to purge his contempt, failing which he would go to jail for six months. Mr. Manis did not purge his contempt, as a result of which a warrant of committal was issued on June 28, 2001, and he went to jail.

11. Mr. Manis brought an application before the Ontario Court of Appeal for an order staying enforcement of the warrant of committal. Justice Simmons of the Court of Appeal heard and denied the application. In her reasons she pointed out that:

a finding of contempt of court transcends the dispute between the parties, it is one which strikes at the very heart of the administration of justice in this country and in this province.

12. Mr. Manis' appeal of the finding of contempt and the punishment of six months imprisonment was heard by Chief Justice McMurtry, and Justices Abella and MacPherson, on September 6, 2001. Writing for the Court of Appeal in a judgment issued on September 18, 2001, Justice MacPherson dismissed the appeal. In his reasons, at paragraph 27, MacPherson J.A. said:

In summary, the appellant had knowledge of Lane J.'s order and he chose not to comply with it. The basic prerequisites for a finding of contempt were, therefore, met.

13. The Court of Appeal also rejected Mr. Manis' submissions that the punishment imposed for contempt was excessive, and found the punishment to be appropriate and necessary. At paragraph 30, Justice MacPherson stated:

When one reads Lane J.'s comprehensive reasons for judgment following a four week trial and O'Connell J.'s reasons on the contempt motion, the only possible conclusion is that the appellant has almost completely abdicated his responsibilities as a spouse and a parent. He then coupled that abdication with cavalier and continuous non-compliance with court orders.

14. The decisions of the courts make it clear that Mr. Manis' deliberate and wilful misconduct amounts to a breach of Rule 201.1. He failed to uphold the good reputation of the profession and its ability to serve the public interest, and accordingly was found guilty of both charges. When the hearing resumed after the panel's deliberations, the chair read the following decision into the record:

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1 and 2, the Discipline Committee finds Warren Ian Manis guilty of charges Nos. 1 and 2.

ORDER AS TO SANCTION

15. Neither counsel called evidence with respect to sanction but both made submissions. In the course of those submissions, issues were raised by members of the panel.

16. The professional conduct committee requested an order which included a reprimand, a fine in the range of \$3,000 to \$5,000, a suspension in the range of nine to twelve months, and notice in *CheckMark* and *The Globe and Mail*, disclosing Mr. Manis' name, as well as to the Canadian Institute of Chartered Accountants and the Public Accountants Council.

17. Counsel for the professional conduct committee characterized Mr. Manis' misconduct as involving moral turpitude. The chair of the panel pointed out that it is usual in cases involving moral turpitude for the discipline committee to order expulsion. The chair further pointed out that expulsion was usually considered when it appeared that a member was ungovernable by the Institute, and that Mr. Manis' deliberate refusal to obey orders of the court suggested that he may well not be a governable member.

18. Mr. Farley stated that the professional conduct committee did not consider Mr. Manis to be ungovernable as he had been cooperative throughout the investigation. In addition, Mr. Farley submitted that there were degrees of moral turpitude, and that the professional conduct committee did not view the moral turpitude in this case to be as great as in other cases that have come before the discipline committee involving offences such as theft.

19. Mr. Cozzi submitted that expulsion was not warranted as no previous complaints had been made against Mr. Manis, and as this was his first occasion before the discipline committee. Mr. Cozzi also submitted that the designation was important to Mr. Manis and his ability to earn income, which was a relevant consideration in light of the fact that, as Mrs. Manis had been diagnosed with cancer, Mr. Manis could well become the sole support for his two children in future.

20. A member of the panel enquired about whether any other regulatory action had been taken as a result of Mr. Manis' contempt of court, or as a result of the assignment in bankruptcy which he had made. The panel was advised that Mr. Manis had agreed to a voluntary suspension of his licence to sell securities. The panel was also advised that as a result of his assignment in bankruptcy, Mr. Manis had been suspended from the rights and privileges of membership in the Institute. His application for a discharge under the *Bankruptcy and Insolvency Act* was being opposed by Mrs. Manis, and it was not known when the hearing to consider his discharge would be held. As a result, it appeared that Mr. Manis would continue to be a suspended member of the Institute for at least several months following the hearing.

21. After hearing the submissions from both counsel, the panel deliberated. Upon concluding our deliberations the hearing was reconvened and the chair summarized the terms of the order on the record. The formal order, which was dated and sent to Mr. Manis on October 16, 2002, reads as follows:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Manis be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Manis be and he is hereby fined the sum of \$8,000, to be remitted to the Institute within nine (9) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Manis be and he is hereby suspended from the rights and privileges of membership in the Institute for a period of twelve (12) months, the suspension to commence upon the termination of his current suspension for bankruptcy.
4. THAT notice of this Decision and Order, disclosing Mr. Manis' name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in *The Globe and Mail* and the *National Post*.
5. THAT Mr. Manis surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date of the commencement of his suspension pursuant to paragraph 3 of this Order, to be held during the period of suspension and thereafter returned to Mr. Manis.

6. THAT in the event Mr. Manis fails to comply with any of the requirements of this Order, 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.

Reprimand

22. The panel concluded that a reprimand was necessary as a specific deterrent to Mr. Manis to stress to him the unacceptability of his conduct as a chartered accountant.

Notice

23. As Mr. Manis' conduct was the subject of newspaper articles in which he was referred to as a chartered accountant, we concluded that it was important that the public be told that his conduct was found to be unacceptable for a chartered accountant by the profession's governing body. Accordingly, we ordered that notice of this decision and order disclosing Mr. Manis' name be given not only in *CheckMark*, but in *The Globe and Mail* and the *National Post* as well.

Suspension or Expulsion

24. Mr. Manis knowingly violated specific orders of the Superior Court of Ontario. Some of his conduct was carried out maliciously in what one can only conclude was a deliberate attempt to cause financial harm to his former wife despite the fact that it would also have a negative impact on his children. Mr. Manis' misconduct is properly characterized as conduct involving moral turpitude. His refusal to govern his conduct in accordance with specific orders of the court suggested that he may not be a governable member of this Institute.

25. The issue of whether or not Mr. Manis should be suspended or expelled was by far the most difficult issue in this case, and one on which the panel could not agree. Three members of the panel concluded that the appropriate order was a suspension coupled with a fine. The public representative would have expelled Mr. Manis. The chair was inclined to agree with the public representative.

26. The majority ultimately accepted the submission of counsel for the professional conduct committee that Mr. Manis' cooperation throughout the process showed that he was not ungovernable, and concluded that there was reason to think Mr. Manis was capable of rehabilitation, and that there was some evidence that rehabilitation had begun.

27. The minority's view was that Mr. Manis' cooperation amounted to little more than a recognition that the evidence supported a finding that he was guilty of professional misconduct and that it was pointless to dispute it.

28. A panel of the discipline committee when imposing a sanction is required to consider both the member and the misconduct of the member with members who have been disciplined in the past and their misconduct. The minority thought the misconduct itself warranted expulsion in this case. The majority did not. Mr. Manis did not misconduct himself in his capacity as a chartered accountant, but rather as a citizen, a husband and a father. This is not a case where the member breached a trust placed in him on account of the fact that he was a chartered accountant. The majority concluded, given Mr. Manis' circumstances, that a fine and suspension, particularly in light of the fact that the suspension will follow the existing suspension of his membership on account of bankruptcy, would be an adequate general as well as specific deterrent.

29. The minority on the panel recognized that there is a distinction between misconduct as a citizen and misconduct as a chartered accountant, but found Mr. Manis' misconduct to be so fundamentally inconsistent with the conduct expected of a chartered accountant that the principles of general and specific deterrence called for his expulsion.

30. The decision of the majority of the panel in this case was greatly influenced by the facts that Mr. Manis had already served his punishment for contempt of court, and that his ability to earn a living was likely going to become vital to the welfare of his dependent children.

31. Another factor mitigating in the member's favour was that the professional conduct committee did not recommend his expulsion. Panels always take the recommendation of the professional conduct committee into account when considering appropriate sanctions. If a panel concludes that the professional conduct committee's recommendation falls within the appropriate range of sanctions, the recommendation is an important factor in the panel's deliberations. In this case, the professional conduct committee thought Mr. Manis was governable, and, as stated above, the majority of the panel concluded that there was evidence to support this conclusion.

32. In cases in which a discipline panel has the advantage of seeing and hearing a disciplined member in the witness box, particularly when the member's evidence is heard over a number of hours or days, the members of the panel are in a much better position than the members of the professional conduct committee to assess both the member and the nature of his or her misconduct. This was not such a case, and the majority did give weight to the professional conduct committee's recommendation on sanction.

Commencement and Length of Suspension

33. Mr. Manis has been suspended as a member of the Institute in good standing on account of his assignment in bankruptcy. At the time of the hearing it was anticipated that that suspension would continue for several months.

34. Ordinarily, in the absence of an appeal, suspensions imposed by order of the discipline committee commence upon the order becoming final under the bylaws following the expiry of the appeal period. In this case, however, such an order would fail to take into account the fact that Mr. Manis may still be under suspension for bankruptcy at the time the order becomes final.

35. The panel did not think a disciplinary suspension which ran concurrently with an already existing suspension would constitute either a sufficient specific deterrent to Mr. Manis or a sufficient general deterrent to other members. Accordingly, it was ordered that the disciplinary suspension commence when the bankruptcy suspension ends. As to the length of suspension, the majority concluded that the appropriate duration to address the misconduct in this case would be 12 months.

Fine

36. The panel did not have a united view as to Mr. Manis' financial position. All of us read the conclusions of the court that Mr. Manis was not forthcoming or candid. The professional conduct committee accepted Mr. Manis' position that he faces financial hardship. While we were all skeptical to varying degrees, the majority of the panel ultimately concluded that Mr. Manis was in financial difficulty. As the panel does not wish to make an order which Mr. Manis will not be able to satisfy, thereby resulting indirectly in his expulsion when the majority did not wish to order his expulsion directly, it was decided that a fine of \$8,000 would be an appropriate specific and general deterrent in this case.

37. In addition to the fine, Mr. Farley asked that Mr. Manis be ordered to pay the costs of this hearing. However, as the panel had ordered a fine higher than what had been recommended by Mr. Farley in recognition of the importance of specific and general deterrence, it concluded it would not make an order for costs.

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

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

MEMBERS OF THE PANEL:

M.S. LEIDERMAN, CA
N.A. MACDONALD EXEL, CA
G.R. PEALL, CA
B. RAMSAY (Public representative)