

William Roy Dagneau: Summary, as Published in *CheckMark*

William Roy Dagneau, of Kitchener, was found guilty of a charge of professional misconduct, under Rules 201.1, arising from his criminal conviction for fraud, in connection with his participation in a scheme to affect the public market price of shares. He was fined \$1,000 and suspended from membership for nine months.

Mr. Dagneau returned to MEMBERSHIP IN GOOD STANDING on October 19th, 1993.

CHARGE(S) LAID re William Roy Dagneau

The Professional Conduct Committee hereby makes the following charge against William R. Dagneau, CA, a member of the Institute:

1. THAT, the said William Dagneau, 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, on or about the 25th day of June 1992, in the province of Ontario, in the City of Kitchener, he was convicted of a criminal offence namely that he, between the 1st day of September, 1986 and the 30th day of April, 1988, in the City of Kitchener and elsewhere in the Province of Ontario, did, with the intent to defraud, affect the public market price of shares of Aggressive Mining Ltd. by deceit, falsehood or other fraudulent means, including distributing misleading information about Aggressive Mining Ltd., contrary to Section 380(2) of the Criminal Code of Canada, all of which is contrary to Rule 201.1 of the rules of professional conduct.

DATED at Toronto this 30th day of July, 1992.

J.L.M. BADALI, FCA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re William Roy Dagneau

DECISION AND ORDER IN THE MATTER OF: A charge against WILLIAM ROY DAGNEAU, CA, a member of the Institute, under Rule 201.1 of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE OCTOBER 8, 1992

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to the charge, THE DISCIPLINE COMMITTEE FINDS William Roy Dagneau guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Dagneau be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Dagneau be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Dagneau be suspended from the rights and privileges of membership in the Institute for a period of nine (9) months from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Dagneau'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; and
 - (c) to the Canadian Institute of Chartered Accountants.
5. THAT Mr. Dagneau 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, to be held by the registrar during the period of suspension and thereafter returned to Mr. Dagneau.
6. THAT in the event Mr. Dagneau fails to comply with the requirement of paragraph 2 of this Order within the time period specified, he shall thereupon be suspended from the rights and privileges of membership in the Institute, and notice of his suspension, disclosing his name, shall be given in the manner specified in paragraph 4 hereof.
7. THAT in the event Mr. Dagneau is suspended pursuant to paragraph 6 hereof, the suspension shall terminate upon compliance with the term of the Order in respect of

which he was suspended, provided that he complies within twelve (12) months from the date of his suspension.

8. THAT in the event Mr. Dagneau fails to terminate a suspension imposed pursuant to paragraph 7 hereof within the twelve (12) months therein specified, 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 in paragraph 5 hereof.

DATED AT TORONTO, THIS 23RD DAY OF OCTOBER, 1992
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re William Roy Dagneau

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: A charge against WILLIAM ROY DAGNEAU, CA, a member of the Institute, under Rule 201.1 of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE OCTOBER 8 1992

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on October 8, 1992.

Mr. Paul Farley attended on behalf of the professional conduct committee. Mr. Dagneau attended with, and was represented by, his counsel, Mr. Drew Horlacher.

The professional conduct committee had laid one charge under Rule of Professional Conduct 201.1, to which Mr. Dagneau pleaded guilty. The member and his counsel confirmed that they understood that upon the plea of guilty, and upon that basis alone, the member could be found guilty of the charge.

An agreed statement of facts and a document brief were filed by Mr. Farley. After hearing the plea of guilty and reviewing the agreed statement of facts and document brief, the discipline committee found Mr. Dagneau guilty of the charge.

The reasons for the committee's finding of guilty are set out below.

The finding of guilty

The charge laid by the professional conduct committee against Mr. Dagneau reads as follows:

THAT, the said William Dagneau, 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, on or about the 25th day of June 1992, in the province of Ontario, in the City of Kitchener, he was convicted of a criminal offence namely that he, between the 1st day of September, 1986 and the 30th day of April, 1988, in the City of Kitchener and elsewhere in the Province of Ontario, did, with the intent to defraud, affect the public market price of shares of Aggressive Mining Ltd. by deceit, falsehood or other fraudulent means, including distributing misleading information about Aggressive Mining Ltd., contrary to Section 380(2) of the Criminal Code of Canada, all of which is contrary to Rule 201.1 of the rules of professional conduct.

The facts of this case, as outlined in the agreed statement of facts and the document brief, are:

1. Mr. Dagneau was a sole practitioner. One of his clients was Brad Freeland (Freeland). Freeland gained control of the board of directors of New Horizons Manufacturing Limited (New Horizons), a private company. Dagneau became a director of New Horizons in October 1986.
2. On May 27, 1987, Freeland arranged a reverse takeover of New Horizons by Aggressive Mining Limited (Aggressive), a public company.

3. At a meeting of the board of directors of Aggressive, Dagneau became a director and president of Aggressive. He did not particularly want to become an officer and director of the company, and after the meeting he did not understand the position he held with Aggressive.
4. Freeland had a network of brokers who, under his direction, bought and sold stocks of Aggressive, in order to influence the stock price. To further attract the interest of the investing public, Freeland entered into an agreement wherein Aggressive would buy a company called Shamrock Pharmaceutical (Shamrock), to close by October 30, 1987.
5. At Freeland's request, a consultant prepared a corporate summary which contained exaggerated sales figures for New Horizons and Shamrock. This summary would impact on the share value of Aggressive. The summary arrived just in time for a promotional meeting and press conference being held on October 1, 1987. When another director of Aggressive saw the inflated figures, he telephoned Dagneau to advise him that the projected sales figures were erroneously high. Dagneau instructed this individual to release the summary anyway, which he did.
6. The shares of Aggressive in May 1987 traded at \$.35 per share. During the week ended October 2, 1987, the price and volume of Aggressive shares increased dramatically to \$1.10 per share. Thereafter, the volume and price declined sharply. By the end of December, the shares held by members of the public who had been misled through the false press releases on October 1, 1987, and through manipulated trading, were almost worthless.
7. Dagneau did not own any Aggressive stock and did not directly benefit financially from the manipulation of the market value of the shares.
8. Dagneau pleaded guilty to a charge under section 380(2) of the *Criminal Code of Canada* and was found guilty on June 25, 1992. He was sentenced to one day in jail and given a fine of \$10,000.
9. It was accepted by the trial judge that the crime was one of misfeasance rather than malfeasance.

Based on the evidence outlined above and the plea of guilty, the discipline committee found Mr. Dagneau guilty of the charge. It then heard counsels' submissions as to sanction, and, after deliberation, made the following order:

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Dagneau be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Dagneau be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Dagneau be suspended from the rights and privileges of membership in the Institute for a period of nine (9) months from the date this Decision and Order becomes final under the bylaws.

4. THAT notice of this Decision and Order, disclosing Mr. Dagneau'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; and
 - (c) to the Canadian Institute of Chartered Accountants.
5. THAT Mr. Dagneau 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, to be held by the registrar during the period of suspension and thereafter returned to Mr. Dagneau.
6. THAT in the event Mr. Dagneau fails to comply with the requirement of paragraph 2 of this Order within the time period specified, he shall thereupon be suspended from the rights and privileges of membership in the Institute, and notice of his suspension, disclosing his name, shall be given in the manner specified in paragraph 4 hereof.
7. THAT in the event Mr. Dagneau is suspended pursuant to paragraph 6 hereof, the suspension shall terminate upon compliance with the term of the Order in respect of which he was suspended, provided that he complies within twelve (12) months from the date of his suspension.
8. THAT in the event Mr. Dagneau fails to terminate a suspension imposed pursuant to paragraph 7 hereof within the twelve (12) months therein specified, 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 in paragraph 5 hereof.

The reasoning behind the committee's order as to sanction is set out below.

Suspension and Fine

The committee, in considering the principles of sentencing, namely specific deterrence, general deterrence and rehabilitation, acknowledges that the principles must be applied so as to help protect the public interest and maintain the good reputation of the profession.

Mr. Dagneau has been subjected to a lengthy criminal court process, which has been draining on him both emotionally and financially. The committee is satisfied with the submissions of defence counsel that the events which occurred here are not likely to ever repeat themselves.

The committee took notice of the trial judge's reasons for sentencing, particularly where he stated:

He Re Dagneau] was not the guiding mind of this scheme. I would classify his crime as one of misfeasance rather than malfeasance. Basically, what he failed to do is to prevent certain misinformation from being disseminated to the public. Another factor to consider is that the accused has been an upstanding citizen in this community and he has no criminal record. The fourth factor is that in committing this offence, he did not abuse his position as an accountant. Anyone in that position could have done the same thing. It was not a question of him using his particular skills as an accountant to manipulate the corporation.

What is alarming to this committee is that Mr. Dagneau allowed information to be released to the public which he knew was wrong and would have an impact on stock prices. He has done

considerable damage to the profession by his actions, or, perhaps more accurately, by his failure to take proper action. His behaviour also harmed the investing public, potentially very significantly in individual cases, though no evidence was led in this regard.

A longer suspension or outright expulsion might well have been in order had it not been for the following mitigating circumstances:

- Mr. Dagneau did not receive any direct financial benefit;
- the member was not an active participant in the development of the scheme, and in many ways was a puppet of Freeland;
- his crime was one of omission rather than commission, or, as observed by the trial judge, one of misfeasance rather than malfeasance;
- the member advised the Institute of the criminal charges against him;
- the emotional burden and financial costs of dealing with the criminal court proceedings for three years have been significant;

The committee did not consider it necessary, in applying the principles of sentencing, to inordinately add to the financial burden already facing Mr. Dagneau as a result of his criminal conviction. Accordingly, a fine of \$1,000, being the minimum amount considered appropriate in the circumstances, was levied.

The suspension of nine months was considered to be a substantial penalty by the committee, but an appropriate one, being as the member's conduct had the potential to cause very significant harm to the investing public, and to the reputation of the chartered accountancy profession, which is generally looked upon as one that provides and supports accurate financial information.

Reprimand

A reprimand was ordered, as usual, as a specific deterrent to the member, to stress to him the unacceptability of his conduct as a chartered accountant.

Notice

Notice, including disclosure of the member's name, was ordered, again as is the normal practice of the committee, as no persuasive reasons not to do so were presented.

DATED AT TORONTO, THIS 7th DAY OF December, 1992
BY ORDER OF THE DISCIPLINE COMMITTEE

R.C.H. ANDREWS, CA - CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

F.J. DUNN, CA
P.J. FITZPATRICK, CA
R.J. NOBES, FCA
D.P. SETTERINGTON, CA

B.W. BOWDEN, PhD (Public representative)