

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 1956

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **ANDREW I. CARSON**, a member of the Institute, under **Rules 104 AND 203.2(a)** of the Rules of Professional Conduct, as amended.

TO: Mr. Andrew I. Carson
2-283 Broadway Avenue
Orangeville, ON L9W 1L2

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order Made October 2, 2008)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario convened on October 2, 2008, to hear charges of professional misconduct brought by the Professional Conduct Committee against Andrew I. Carson, a member of the Institute.
2. Alexandra Hersak appeared as counsel for the Professional Conduct Committee. Mr. Carson appeared on his own behalf and confirmed for the record that he understood that he was entitled to be represented by counsel and that he was waiving that right.
3. The decision of the panel was made known at the conclusion of the hearing on October 2, 2008 and the written Decision and Order sent to the parties on October 8, 2008. These reasons, given pursuant to Bylaw 574, include the charges, the decision, the order, and the reasons of the panel for its decision and order.

CHARGES

4. The following charges were laid by the Professional Conduct Committee against Mr. Carson on July 23, 2008:
 1. THAT the said Andrew I. Carson, in or about the period April 1, 2008 to July 18, 2008, 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(a) of the Rules of Professional Conduct.
 2. THAT the said Andrew I. Carson, in or about the period May 13, 2008 to July 18, 2008, failed to promptly reply in writing to a letter from the Institute to which a written reply is specifically required, in that he failed to reply to letters dated April 8, 2008 and April 29, 2008 from Ms. Tatiana Rabinovitch, CA,

Associate Director of Standards Enforcement at the Institute, contrary to Rule 104 of the Rules of Professional Conduct.

PLEA

5. Mr. Carson entered a plea of guilty to both charges and confirmed that he understood that, on the basis of his plea of guilty, and on that basis alone, he could be found guilty of the charges.

EVIDENCE

6. Ms. Hersak filed the affidavit of Grant Dickson, FCA, the Director of Practice Inspection of the Institute, sworn on September 25, 2008 (Exhibit 2); and the affidavit of Tatiana Rabinovitch, CA, the Associate Director of Standards Enforcement, sworn on September 25, 2008 (Exhibit 3). Mr. Carson, in his testimony, admitted the facts set out in the affidavits were essentially true.

7. The facts in this matter are not in dispute and can be succinctly stated. Mr. Carson's office was selected to be inspected in the 2008–2009 practice inspection year. He was informed of this by letter dated January 31, 2008, requiring him to complete and return certain forms not later than March 7, 2008. Mr. Carson did not do so. On March 18, 2008, Mr. Dickson wrote to Mr. Carson, requiring him to return the forms on or before April 1, 2008, and warning him that a failure to do so would result in an immediate referral to the Professional Conduct Committee. Mr. Carson did not send in the required forms or contact Mr. Dickson or anyone in his department to request an extension of time.

8. Ms. Rabinovitch wrote to Mr. Carson on April 8, 2008, advising him of the complaint received from Practice Inspection and requesting a response on or before April 23, 2008. Mr. Carson did not respond or otherwise contact Ms. Rabinovitch. Ms. Rabinovitch wrote again to Mr. Carson, on April 29, 2008, requiring him to respond on or before May 13, 2008, failing which the matter would be referred to the Professional Conduct Committee. Mr. Carson did not respond. Ms. Rabinovitch directed a staff member to contact Mr. Carson on May 14, 2008. Mr. Carson told the staff member that he would provide a written response to Standards Enforcement by the end of that week. He did not do so.

9. Mr. Carson knew the letters were important and he understood that he was required to cooperate with Practice Inspection. He acknowledged that he was responsible for his failure to respond. He explained that he was under a great deal of pressure, both in his personal and professional life. He said that he was in a state of panic at times in April. He also said that rather than respond to Practice Inspection he was attempting to get client work done.

DECISION

10. Upon deliberating, after finding the facts to be as set out above, the panel concluded that both charges had been proven and that Mr. Carson was guilty of professional misconduct. When the hearing reconvened, the Chair read the following decision:

THAT, having seen, heard and considered the evidence, and having heard the plea of guilty to charge Nos. 1 and 2, the Discipline Committee finds Mr. Andrew I. Carson guilty of charge Nos. 1 and 2.

SANCTION

11. Ms. Hersak filed a booklet (Exhibit 5) which included four letters from the Professional Conduct Committee to Mr. Carson and a copy of the reasons of the Discipline Committee dated June 19, 2003, which found Mr. Carson guilty of practising or holding himself out as a chartered accountant while he was suspended.

12. Mr. Carson gave evidence with respect to sanction. He outlined in some detail the personal and professional difficulties he encountered from November 2007 until May 2008. He was cross-examined by Ms. Hersak and he also answered questions from the panel.

Submissions

13. Ms. Hersak outlined the terms of the order requested by the Professional Conduct Committee which were: a reprimand; a fine of \$5,000; an order for costs in the amount of \$2,800; and publicity, including the disclosure of the members name.

14. Ms. Hersak said that the three general principles which apply when sanction is imposed, specific deterrence, general deterrence and rehabilitation were all relevant in this case.

15. Ms. Hersak submitted that Mr. Carson's guilty plea and his expressed willingness to change, which the Professional Conduct Committee did not challenge, were mitigating factors. She submitted that the fact it took him seven months to submit the forms to Practice Inspection, and only did so after appearing at an assignment hearing, given that he had received guidance from the Professional Conduct Committee on four occasions and had been found guilty of professional misconduct on one occasion, were aggravating factors.

16. Ms. Hersak reviewed a number of cases which she submitted supported a fine in the amount of \$5,000 as a general deterrent to other members and a specific deterrent to Mr. Carson.

17. Ms. Hersak filed a Costs Outline (Exhibit 6) which set out that the cost of the investigation and prosecution in this case were \$5,693.12. Ms. Hersak said that the Professional Conduct Committee was seeking approximately 50% of those costs as partial indemnification.

18. Ms. Hersak said that the publication of a notice disclosing Mr. Carson's name was required as both a general deterrent to others and a specific deterrent to Mr. Carson. She submitted that there were no rare or unusual circumstances which suggested that the usual publication of a notice should not be made.

19. Mr. Carson also made submissions with respect to sanction. He repeated his evidence that he had been told by his doctor that he should stop practising public accounting and that he intended to do so. He said he had entered into a verbal understanding with another member to take over his practice.

20. After hearing the submissions of both parties, the hearing recessed while the panel determined what order it would make. When the panel had concluded its deliberations the hearing reconvened and the Chair set out on the record a summary of the terms of the order. The Chair also delivered a verbal reprimand to Mr. Carson for his repeated failures to comply with requirements of the Institute.

The order

21. The written Decision and Order of the panel, which was sent to the parties on October 8, 2008, set out the terms of the order which are as follows:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Carson be reprimanded verbally and in writing by the chair of the hearing.
2. THAT Mr. Carson be and he is hereby fined the sum of \$5,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Carson'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 all members of the Institute;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to all provincial institutes/Ordre,and shall be made available to the public.
4. THAT in the event Mr. Carson 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 and his public accounting licence shall thereupon be suspended 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 the three month period, he shall thereupon be expelled from membership in the Institute and his licence shall thereupon 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. Carson's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Carson and shall be in addition to any other costs ordered by the committee.

AND IT IS FURTHER ORDERED:

5. THAT Mr. Carson be and he is hereby charged costs fixed at \$5,693.12 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.

The misconduct

22. When a panel of the Discipline Committee imposes a sanction on a member found guilty of professional misconduct, it considers both the misconduct and the relevant facts and circumstances of the member, both at the time of the misconduct and during the investigation and hearing. The nature of the misconduct is clear: Mr. Carson failed to cooperate with Practice Inspection. He compounded his failure by ignoring Standards Enforcement. He did finally submit the required forms to Practice Inspection in September, 2008, when he attended

at an assignment hearing. The result of his misconduct is that his practice inspection will be delayed for one year.

23. As Mr. Carson had already begun to cooperate with Practice Inspection it was not necessary for the panel to order him to do so. However, this does not mean that the panel had no concerns about Mr. Carson's ability or willingness to comply with the requirements of his governing body.

24. Mr. Carson had been cautioned twice by the Professional Conduct Committee about the need to cooperate on a timely basis with Practice Inspection. The first caution was by letter dated October 21, 1996 (Exhibit 5, Tab 1), and the second caution was made by letter dated October 24, 2005 (Exhibit 5, Tab 4).

25. Mr. Carson was cautioned twice by the Professional Conduct Committee about the need to comply with the requirement of the profession to provide professional services with due care (Rule 202). On one of those occasions, February 8, 2001, (Exhibit 5, Tab 2) it was also necessary to caution Mr. Carson about the need to comply with the independence requirements of the profession (Rule 204.2). On the other occasion, April 7, 2006, (Exhibit 5, Tab 5) the Professional Conduct Committee also found it necessary to caution Mr. Carson about the need to keep informed of and comply with developments in professional standards (Rule 203.1) and his obligation to practise in accordance with generally accepted standards of the profession (Rule 206).

26. On June 19, 2003, Mr. Carson was found guilty by the Discipline Committee of practising or holding himself out as a chartered accountant while he was suspended (Exhibit 5, Tab 4)

27. Mr. Carson faced personal and professional difficulties in the period November 2007 to May 2008. He knew in April 2008 that he had not responded to Practice Inspection and that he was behind with the work he had to do for clients. He did not ask for an extension from Practice Inspection or Standards Enforcement. He did not get help to assist him with his work load. In fact, in April he took on a difficult, time sensitive and time consuming engagement.

28. Members of the Institute who practise public accounting do go through difficult personal and professional times. Even in such times, members know they must meet their professional obligations and, if necessary, make appropriate arrangements to do so. While it may be understandable that in an isolated incident a member will fail to meet his or her obligations, it is not understandable or acceptable that a member would repeatedly fail to do so. Mr. Carson acknowledged his repeated shortcomings, and said that it should not have been necessary for the Institute to "babysit him". However, he did not change his ways.

29. Mr. Carson's explanation, that he put his clients' interests first, is neither a defence to a charge of professional misconduct nor an excuse for his repeated failures. Furthermore, it ignores the reality that, unless he practises in accordance with the standards of the profession, he will not be serving his clients' interests.

30. His failure to cooperate on a timely basis and to demonstrate that he clearly meets the standards required of the profession over a period of years suggests that he may be ungovernable, that he is either unwilling or unable to discipline himself as a chartered accountant must, and, if necessary, get help to meet his professional obligations.

Reprimand

31. The panel concluded that it would be appropriate for the chair to verbally reprimand Mr. Carson at the hearing. The reasons for the verbal reprimand are apparent from the reprimand. The Chair of the panel said:

Mr. Carson, it has been decided by the Discipline Panel that as chair of the Panel I give you a verbal reprimand. Mr. Carson, you have been found guilty by a panel of your peers of a charge under Rule 203.2(a) and a charge under Rule 104 of the Rules of Professional Conduct. The Panel was alarmed by the repeated failures over the past 12 years and your inability to adhere to the Rules of Professional Conduct of the Institute of Chartered Accountants of Ontario. These repeated failures led us to seriously consider whether or not you are a governable member. This consideration led to the overall consideration that if we considered you ungovernable, we should expel you from continuing to be a chartered accountant in this Institute. We decided against that today.

The rules of professional conduct, comprehensive in their scope, practical in application and addressed to high moral standards, serve not only as a guide to the profession itself but as a source of assurance of the profession's concern for the public it serves. It is a mark of a profession that there is a voluntary assumption, by those who comprise it, the professional community, of ethical principles which are aimed, first and foremost, at protection of the public and, second at achieving orderly and courteous conduct within the profession. It is to these purposes that the Institute's rules are directed.

Mr. Carson, as a panel of your peers, we are concerned for your well being. We are strongly suggesting that you undertake counseling to assist you and ensure you get help for the issues that you're facing. We suggest the CA Assistance Program may be of some help to you or otherwise find some type of professional counseling, but the willingness to get help is solely in your hands. Mr. Carson, what I can tell you, however, is that if you find yourself before the Discipline Committee again, the result, I suggest to you, will be a high probability that you would be found ungovernable and suffer the full consequences of that. Mr. Carson, we hope you do get help and we hope we do not have to see you here again.

32. The panel also ordered Mr. Carson to be reprimanded in writing to stress the unacceptable nature of his misconduct and his need to resolve his practice problems.

Fine

33. The panel concluded that a fine of \$5,000 was required in the circumstances of this case as a specific deterrent to Mr. Carson and as a general deterrent to other members. Mr. Carson's financial position is such that a \$5,000 fine is a significant fine and he will need some months to pay it. Accordingly, the panel ordered that the fine is to be paid within 12 months.

Costs

34. The panel reviewed the Costs Outline filed by Ms. Hersak and concluded that the costs which had been incurred for the investigation and prosecution were reasonable. While the Professional Conduct Committee asked for only half of these costs, the panel concluded that Mr. Carson should reimburse the Institute for the entire amount, \$5,693.12. It was necessary for the Professional Conduct Committee to investigate Mr. Carson on five previous occasions. He had the benefit of four cautions. He had many opportunities to put his professional life in order but he did not do so. There is no reason why the membership as a whole should bear any of the costs incurred on this second occasion on which he has been found guilty of professional misconduct.

Publication

35. The panel concluded that there were no rare and unusual circumstances to justify or require the withholding of the usual notice including the disclosure of Mr. Carson's name. Accordingly, in the interest of transparency, to show that the Institute takes the matter of governing its members seriously, and in the interest of general and specific deterrence, the usual order with respect to publication was made.

Failure to comply

36. There must be consequences for failure to comply with an order of the Discipline Committee. In this case the panel concluded that the appropriate consequence would include a suspension for failure to comply and, in the event the suspension continues for a period of three months, Mr. Carson shall be expelled from membership. In the event he is suspended or expelled, his licence to practise public accounting shall be suspended or revoked, and notice of the expulsion and the suspension or revocation of his licence to practise public accounting shall be given in a newspaper distributed in the geographic area of his practice and all costs associated with the publication or publications shall be borne by Mr. Carson.

DATED AT TORONTO THIS 24TH DAY OF FEBRUARY, 2009.
BY ORDER OF THE DISCIPLINE COMMITTEE

D.W. DAFOE, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

G. KROFCHICK, CA
D.G. WILSON, CA
R.A. WORMALD, FCA
R.H. CARRINGTON (PUBLIC REPRESENTATIVE)