

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: A charge against **ANDREW IAN CARSON, CA**, a member of the Institute, under **Rule 203.2(a)** of the Rules of Professional Conduct, as amended.

TO: Mr. Andrew Ian Carson

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision and Order made November 23, 2010)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on November 23, 2010, to hear a charge of professional misconduct brought by the Professional Conduct Committee against Andrew I. Carson, a member of the Institute.

2. Alexandra Hersak appeared on behalf of the Professional Conduct Committee. Mr. Carson was not represented by counsel and did not attend. Glenn Stuart attended the hearing as counsel to the Discipline Committee. The panel determined that Mr. Carson had received proper notice of the hearing and decided to proceed in his absence.

3. The decision of the panel was made known at the conclusion of the hearing, and the written Decision and Order sent to the parties on December 2, 2010. These reasons, given pursuant to Bylaw 574, contain the charge, the decision, the order, and the reasons of the Discipline Committee for its decision and order.

CHARGES

4. The following charge was laid against Mr. Carson by the Professional Conduct Committee on September 7, 2010:

THAT the said Andrew I. Carson, in or about the period October 13 to November 30, 2009, 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.

PLEA

5. A plea of not guilty was entered on Mr. Carson's behalf.

EVIDENCE

6. The evidence for the Professional Conduct Committee was presented by way of the affidavits from Grant Dickson, Director of Practice Inspection and Tatiana Rabinovitch, Associate Director of Standards Enforcement (Exhibit 3). In his affidavit, Mr. Dickson outlined

the series of events that resulted in the charge. Mr. Carson's practice was selected for re-inspection during the 2009-2010 practice inspection year because he did not provide his Quality Assurance Manual when inspected in 2008. Mr. Carson was notified that his practice had been selected on May 1, 2009. In her affidavit Ms. Rabinovitch outlined in detail the correspondence with Mr. Carson as evidence that Mr. Carson did not provide the requested material when requested. Mr. Carson provided his Quality Assurance Manual on November 30, 2009.

7. Rule 203.2 (a) of the Rules of Professional Conduct requires all members to cooperate with an investigation by the Professional Conduct Committee.

DECISION

8. After deliberating, the panel found Mr. Carson had breached the Rules of Professional Conduct and that the breach was of such a nature and degree as to constitute professional misconduct, and made the following decision:

THAT, having determined to proceed with the hearing in the absence of Mr. Carson pursuant to Bylaw 560, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to the charge, and having seen and considered the evidence, the Discipline Committee finds Andrew Ian Carson guilty of the charge.

SANCTION

9. Ms. Hersak, on behalf of the Professional Conduct Committee, sought a sanction of: a written reprimand; expulsion; full publicity; and 50% of the costs set out in the Costs Outline (Exhibit 5), subject to any adjustments. Ms. Hersak stated that the PCC was not seeking a fine in this case as it does not appear to have acted as a deterrent to Mr. Carson in the past.

10. Ms. Hersak filed an affidavit of Tatiana Rabinovitch outlining Mr. Carson's history of disciplinary matters (Exhibit 4). The earliest letter from the Professional Conduct Committee was dated October 21, 1996 and admonished Mr. Carson to cooperate on a timely basis with practice inspection area of the Institute under Rule 203.2 of the Rules of Professional Conduct. On February 8, 2001, the Deputy Chair of the Professional Conduct Committee wrote to Mr. Carson regarding the requirement to remain objective and to act with due care as required under Rule 202. On October 24, 2005 the Deputy Chair of the Professional Conduct Committee wrote to Mr. Carson with respect to timely cooperation with practice inspection in accordance with Rule 203.2. On April 7, 2006 the Chair of the Professional Conduct Committee wrote to Mr. Carson to provide guidance on adherence to generally accepted standards of practice of the profession. On June 19, 2003, Mr. Carson was found guilty by the Discipline Committee for practising as a chartered accountant when suspended, contrary to Rule 101. On October 2, 2008, Mr. Carson was found guilty by the Discipline Committee for failing to cooperate with Practice Inspection and failing to respond to letters from Standards Enforcement.

11. Ms. Hersak submitted that despite numerous letters from Professional Conduct Committee and two previous hearings before the Discipline Committee, Mr. Carson has not learned from these experiences and has demonstrated he is not governable, and should be expelled.

ORDER

12. After deliberating, the panel made the following order:

IT IS ORDERED in respect of the charge:

1. THAT Mr. Carson be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Carson be and he is hereby fined the sum of \$4,000 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. Carson be and he is hereby expelled from membership in the Institute.
4. 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 all provincial institutes/Ordre,
 and shall be made available to the public.
5. THAT notice of the expulsion, disclosing Mr. Carson's name, be given by publication on the Institute's website, and in a newspaper distributed in the geographic area of Mr. Carson's 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.
6. THAT Mr. Carson surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

AND IT IS FURTHER ORDERED:

7. THAT Mr. Carson be and he is hereby charged costs fixed at \$2,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.

REASONS FOR SANCTION

13. Mr. Carson has demonstrated that he does not respect his responsibilities and duties to the profession. This lack of respect and response to the profession's governance bodies indicates that Mr. Carson is not governable. His refusal to abide by a mandated process has wasted time and resources of the Institute. Mr. Carson's behaviour has made it clear he does not respect the Institute's rules of professional conduct.

14. The essence of self-regulation is an agreement between the regulator and the member that the member will abide by the regulator's oversight, guidance and correction. If this agreement is not respected, self-regulation by the Institute of its members is challenged and the public placed at risk. Mr. Carson's behaviour indicates that he is ungovernable and should be expelled.

15. In order to maintain the public trust, and to ensure that any other member who might be tempted to act in such a manner will be effectively deterred, Mr. Carson's conduct must be denounced. The objective of general deterrence is achieved by expulsion, publicity and the imposition of a fine.

16. It is appropriate that the member whose conduct necessitated the investigation and hearing, rather than the membership as a whole, bear a portion of the costs of this matter, and it has been so ordered.

DATED AT TORONTO THIS 25th DAY OF FEBRUARY, 2011.
BY ORDER OF THE DISCIPLINE COMMITTEE

J. A. CULLEMORE, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

J.B. BARRACLOUGH, FCA
B.M. SOLWAY (PUBLIC REPRESENTATIVE)
H.G. TARADAY, CA