

## **Andrew Paul Sherwood: Summary, as Published in *CheckMark***

**Andrew Paul Sherwood**, of Burlington, was found guilty of one charge under Rule 203.2 of failing to cooperate in the attempted inspection of his practice, and two charges under Rule 104 of failing to promptly reply in writing to correspondence from the Institute in respect of matters of professional conduct. One of the charges under Rule 104 arose out of Mr. Sherwood's failure to respond to a standards enforcement enquiry into his non-cooperation with practice inspection. The other Rule 104 charge arose out of his failure to respond to a standards enforcement enquiry in respect of a complaint received from a member of the public. Mr. Sherwood attended neither the discipline committee's assignment hearing nor its formal hearing into the charges. He was fined \$4,000 and ordered to respond to practice inspection and standards enforcement within a specified time. As a result of his failure to comply with the order, Mr. Sherwood was expelled from the Institute.

## **CHARGE(S) LAID re Andrew Paul Sherwood**

The Professional Conduct Committee hereby makes the following charges against Andrew P. Sherwood, CA, a member of the Institute:

1. THAT, the said Andrew P. Sherwood, during the period June 9, 1998 to March 9, 1999, failed to cooperate with officers, servants or agents of the Institute who were appointed to arrange or conduct an inspection of his practice, contrary to Rule 203.2 of the rules of professional conduct.
2. THAT, the said Andrew P. Sherwood, during the period December 17, 1998 to March 9, 1999, failed to promptly reply in writing to a letter from the Institute in respect of a matter of professional conduct signed by the director of standards enforcement and dated and sent December 17, 1998 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

Dated at Toronto this 9<sup>th</sup> day of March, 1999.

UWE MANSKI, FCA  
DEPUTY CHAIR, PROFESSIONAL CONDUCT COMMITTEE

## **DISCIPLINE COMMITTEE re Andrew Paul Sherwood**

**DECISION AND ORDER IN THE MATTER OF:** Charges against **ANDREW PAUL SHERWOOD**, a suspended member of the Institute, under **Rules 104 and 203.2** of the Rules of Professional Conduct, as amended.

### **DECISION AND ORDER MADE DECEMBER 15, 1999**

#### **DECISION**

THAT, having seen and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Sherwood, pursuant to Institute 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 charges, the Discipline Committee finds Andrew Paul Sherwood guilty of charges Nos. 1 and 2, dated March 9, 1999, and charge No. 1, dated April 6, 1999, as amended.

#### **ORDER**

IT IS ORDERED in respect of the charges:

1. THAT Mr. Sherwood be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Sherwood be and he is hereby fined the sum of \$4,000, to be remitted to the Institute within seven (7) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Sherwood respond to the letter from the administrative assistant, practice inspection, dated May 31, 1999, and the letter from the director of standards enforcement, dated February 10, 1999, within seven (7) days from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Sherwood's 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; and
  - (c) by publication in *CheckMark*.
5. THAT in the event Mr. Sherwood fails to comply with 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, and by publication in *The Hamilton Spectator*.

DATED AT TORONTO THIS 21ST DAY OF DECEMBER, 1999  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

## **DISCIPLINE COMMITTEE re Andrew Paul Sherwood**

**REASONS FOR DECISION AND ORDER IN THE MATTER OF:** Charges against **ANDREW PAUL SHERWOOD**, a suspended member of the Institute, under **Rules 104 and 203.2** of the Rules of Professional Conduct, as amended.

### **REASONS FOR THE DECISION AND ORDER MADE DECEMBER 15, 1999**

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on December 15, 1999 to hear evidence concerning charges brought by the professional conduct committee against Andrew Paul Sherwood. The hearing had originally commenced on October 19, 1999, at which time the professional conduct committee brought an application to amend the charges. As Mr. Sherwood was not present on that day, the hearing was adjourned in order that he could be personally served with the application to amend the charges, as well as with notification of the new December 15 hearing date chosen.

The hearing concluded on December 15, and the panel's decision and order was issued on December 21, 1999. These reasons, issued in writing pursuant to Bylaw 574, contain the panel's decision and order, and the charges laid by the professional conduct committee, as well as the reasons of the panel.

### **DECISION TO PROCEED**

At 10:00 a.m. on December 15, the time at which the hearing was scheduled to commence, Mr. Sherwood was not present in the Council Chamber, and the secretary to the discipline committee reported that he was not in the common area outside. The chair waited for more than a half hour, and then decided to commence the hearing. The panel reviewed the Affidavit of Service of Notice of Continuation of Hearing and Notice of Application to Amend Charges. Satisfied that Mr. Sherwood had received proper notice, the panel determined to proceed with the hearing in his absence pursuant to the Bylaw 560. The professional conduct committee was represented by Ms. Deborah McPhadden.

### **APPLICATION TO AMEND CHARGES**

Three charges had been laid by the professional conduct committee, two charges on March 9, and one charge on April 6, 1999. The professional conduct committee's application to amend the charges sought to extend the time frames of the alleged misconduct from the dates of the charges to September 21, 1999. The reason advanced for the requested extension was that, while Mr. Sherwood had neither cooperated with practice inspection nor replied in a substantive way to letters from the director of standards enforcement, he did send a letter, dated May 14, 1999, in which he alleged failure to receive some of the Institute's earlier correspondence. It was asserted that Mr. Sherwood had been given a second chance to cooperate as a result of his letter, but still did not cooperate or respond after May 14, 1999. The amendments were permitted, as it did not appear to the panel that Mr. Sherwood would be prejudiced by them.

## **THE CHARGES**

As amended, the charges laid on March 9, 1999 read:

1. THAT, the said Andrew P. Sherwood, during the period June 9, 1998 to September 21, 1999, failed to cooperate with officers, servants or agents of the Institute who were appointed to arrange or conduct an inspection of his practice, contrary to Rule 203.2 of the rules of professional conduct.
2. THAT, the said Andrew P. Sherwood, during the period December 17, 1998 to September 21, 1999, failed to promptly reply in writing to a letter from the Institute in respect of a matter of professional conduct signed by the director of standards enforcement and dated and sent December 17, 1998 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

As amended, the charge laid on April 6, 1999 read:

THAT, the said Andrew P. Sherwood, in or about the period March 10, 1999 to September 21, 1999, failed to promptly reply in writing to a letter from the Institute in respect of a matter of professional conduct signed by the director of standards enforcement and dated and sent March 10, 1999 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

A plea of not guilty was entered on behalf of Mr. Sherwood to the charges laid against him by the professional conduct committee.

## **THE DECISION AND ORDER**

After hearing the evidence, and upon deliberation, the panel found Mr. Sherwood guilty of the three charges laid. Following submissions from Ms. McPhadden as to sanction, the panel deliberated again and determined its order. The final decision and order read as follows:

### **DECISION**

THAT, having seen and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Sherwood, pursuant to Institute 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 charges, the Discipline Committee finds Andrew Paul Sherwood guilty of charges Nos. 1 and 2, dated March 9, 1999, and charge No. 1, dated April 6, 1999, as amended.

### **ORDER**

IT IS ORDERED in respect of the charges:

1. THAT Mr. Sherwood be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Sherwood be and he is hereby fined the sum of \$4,000, to be remitted to the Institute within seven (7) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Sherwood respond to the letter from the administrative assistant, practice inspection, dated May 31, 1999, and the letter from the director of standards enforcement, dated February 10, 1999, within seven (7) days from the date this Decision

and Order becomes final under the bylaws.

4. THAT notice of this Decision and Order, disclosing Mr. Sherwood's 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; and
  - (c) by publication in *CheckMark*.
5. THAT in the event Mr. Sherwood fails to comply with 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, and by publication in *The Hamilton Spectator*.

Set out below are the panel's reasons for its decision and order.

### **REASONS FOR THE DECISION ON THE CHARGES**

With respect to the charges laid on March 9, 1999, Ms. McPhadden filed an affidavit of Mr. Grant Dickson, director of practice inspection, sworn September 21, 1999, and an affidavit of Ms. Joanna Maund, director of standards enforcement, sworn March 29, 1999, as well as a document brief which contained the correspondence referred to in both affidavits, including and in particular:

- letters from Mr. Dickson to Mr. Sherwood dated June 9 and October 14, 1998;
- a letter from Ms. Maund to Mr. Sherwood dated December 17, 1998;
- Mr. Sherwood's letter of May 14, 1999; and
- a letter from Ms. Silva Liu, administrative assistant to the director of practice inspection, to Mr. Sherwood, dated May 31, 1999, asking Mr. Sherwood to send in information needed to determine the nature and extent of his practice, so that a determination could be made as to how best to proceed with his inspection.

With respect to the charge laid April 6, 1999, Ms. McPhadden filed an affidavit of Ms. Joanna Maund, sworn September 22, 1999, and a document brief which contained the relevant correspondence, including and in particular letters from Ms. Maund to Mr. Sherwood dated February 10 and March 10, 1999, requesting Mr. Sherwood to respond in writing to a complaint made against him by a member of the public.

The evidence before the panel was clear. Mr. Sherwood did not reply to the letters from Mr. Dickson dated June 9 and October 14, 1998. Accordingly, he was convicted of the first charge laid on March 9, 1999.

Upon Mr. Sherwood's failure to cooperate with practice inspection, a complaint was made to the professional conduct committee, which resulted in a letter being sent to him by the director of standards enforcement on December 17, 1998, to which he did not respond. Accordingly, he was found guilty of the second charge laid on March 9, 1999.

In February 1999, a complaint was received by the professional conduct committee from a member of the public, which caused the director of standards enforcement to write to Mr. Sherwood on February 10, and again on March 10, 1999. The letters specifically requested a reply, but, contrary to Rule 104, Mr. Sherwood failed to reply, and was accordingly found guilty of the charge laid on April 6, 1999.

### **REASONS FOR THE ORDER AS TO SANCTION**

This was a case in which each of the three general principles which the discipline committee considers when imposing a sanction applied. In light of Mr. Sherwood's persistent failure to cooperate with the Institute's self-regulatory processes, the order had to specifically deter him from similar conduct in the future, while providing him an opportunity to rehabilitate himself, and also had to send a clear message of deterrence to other members.

### **Reprimand**

The panel believes that a reprimand in writing from the chair of the hearing will stress to Mr. Sherwood the unacceptability of his conduct as a chartered accountant.

### **Fine**

Ms. McPhadden asked that a fine be levied against Mr. Sherwood in the amount of \$ 3,000. The panel agreed that a fine was appropriate in this case, both as a deterrent to like-minded members, and as a demonstration to the public of the profession's intolerance of the type of behaviour demonstrated by this member. With the issuance in October 1999 of the discipline committee's reasons in the Humphrey case, the membership had notice that higher fines could be expected in future cases involving failure to cooperate with the Institute's regulatory functions. Accordingly, the panel levied a fine of \$ 4,000.

### **Requirement to Cooperate**

The panel agreed with the submissions of counsel for the professional conduct committee that Mr. Sherwood should be allowed seven days from the date of the decision and order becoming final under the bylaws to respond to the letters dated February 10 and May 31, 1999, from the standards enforcement and practice inspection areas, respectively. This was considered adequate time for Mr. Sherwood to respond, in view of the fact that the order will not become final until after the expiry of a thirty day appeal period following Mr. Sherwood's receipt of these reasons.

### **Notice**

The giving of notice of the panel's decision and order, disclosing Mr. Sherwood's name, is, in the opinion of the panel, a general deterrent. It is the discipline committee's responsibility to ensure that members of the profession and the general public are made aware that failure on the part of a member to cooperate with the Institute will result in the imposition of serious sanctions.

### **Failure to Comply**

The order requires that Mr. Sherwood reply to certain letters within a specified time. The panel feels that Mr. Sherwood has been given many previous chances to respond and this will be the last one. Failure to comply with any requirement of the order within the prescribed time period will result in Mr. Sherwood's immediate expulsion from the Institute, with notice of such expulsion to be published in *The Hamilton Spectator*.

DATED AT TORONTO THIS            DAY OF MARCH, 2000  
BY ORDER OF THE DISCIPLINE COMMITTEE

D.P. SETTERINGTON, CA –CHAIR  
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

S.W. SALTER, CA  
B.L. STEPHENS, CA  
R.D. WHEELER, FCA  
B.A. YOUNG (Public representative)