

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **DIANNE E. CHANDLER**, a suspended member of the Institute, under **Rules 104 and 203.2** of the Rules of Professional Conduct, as amended.

TO: Ms. Dianne E. Chandler
47 Mathison Street East
PO Box 70
HAVELOCK, ON K0L 1Z0

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order made January 6, 2009)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario convened on January 6, 2009, to hear charges of professional misconduct brought by the Professional Conduct Committee against Dianne Elizabeth Chandler, a suspended member of the Institute.
2. Alexandra Hersak appeared for the Professional Conduct Committee.
3. Ms. Chandler attended and was not represented by counsel. She acknowledged that she understood that she had the right to be represented by counsel, and that she waived that right.
4. The decision and the terms of the order were made known at the hearing on January 6, 2009. The written Decision and Order was sent to the parties on January 12, 2009. 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

5. Before the plea to the charge was taken, the Professional Conduct Committee, with the consent of Ms. Chandler, withdrew the charge laid on April 7, 2008 and replaced it with amended charges dated December 16, 2008. The amended charges read:

1. THAT the said Dianne E. Chandler, in or about the period December 14, 2007 to April 7, 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 of the Rules of Professional Conduct.

2. THAT the said Dianne E. Chandler, in or about the period February 6, 2008 to August 18, 2008, failed to promptly reply in writing to a letter from the Institute to which a written reply is specifically required, in that she failed to reply to letters dated January 23, 2008 and February 13, 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

6. Ms. Chandler entered a plea of guilty to both charges. She acknowledged she understood that, on the basis of her plea of guilty and on that basis alone, she could be found guilty of each of the charges.

THE PROCEEDINGS

7. Ms. Hersak gave an overview of the case against Ms. Chandler. She filed the Affidavit of David Kennedy, CA, an Associate Director of Practice Inspection, and the affidavit of Tatiana Rabinovich, CA, the Associate Director of Standards Enforcement, both sworn on December 17, 2008. (Exhibits 4 and 5)
8. Ms. Chandler gave evidence and testified about significant medical and financial issues which she and her family faced throughout the relevant period.
9. Members of the panel had a number of questions for Ms. Chandler with respect to both her circumstances and her practice.
10. At the conclusion of the evidence, Ms. Hersak made brief submissions.

DECISION

11. After deliberating, the panel made the following decision:

THAT, charge No. 1 dated April 7, 2008 having been withdrawn and charge Nos. 1 and 2 dated December 16, 2008 having been filed at the hearing by the Professional Conduct Committee, and having heard a plea of guilty to charge Nos. 1 and 2, and having seen and considered the evidence, the Discipline Committee finds Ms. Dianne E. Chandler guilty of charge Nos. 1 and 2.

REASONS FOR THE DECISION

12. Ms. Chandler was asked by letter dated January 31, 2007, to complete and return forms to Practice Inspection not later than March 2, 2007. In fact, Practice Inspection had to write again to Ms. Chandler asking for the forms on March 15, 2007, and May 10, 2007. The forms were not received by Practice Inspection until October 23, 2007.

13. On November 1, 2007, Practice Inspection asked Ms. Chandler to provide a copy of her quality control manual, certain client working papers and copies of her continuing professional development logs by December 14, 2007. Ms. Chandler advised Practice Inspection by a voice message on December 18, 2007, that she had been unable to submit the requested documentation because she had been unwell.

14. Grant Dickson, FCA, the Director of Practice Inspection, wrote to Ms. Chandler on January 3, 2008, asking that she submit the requested documents before January 17, 2008, failing which the matter would be referred to the Professional Conduct Committee. Ms. Chandler did not submit the requested documents by January 22, 2008, and Mr. Dickson did refer the matter to the Professional Conduct Committee.

15. Ms. Rabinovitch wrote to Ms. Chandler on January 23, 2008, specifically requesting a reply to the complaint received from Mr. Dickson, on or before February 6, 2008. Ms. Chandler did not reply as required. Ms. Rabinovitch wrote to Ms. Chandler again on February 13, 2008, and left a voice mail for her on February 25, 2008, but as of August 18, 2008, Ms. Chandler had not responded.

16. Ms. Chandler acknowledged that she had not responded to Practice Inspection or Standards Enforcement as she should have. She explained it was because of certain medical, financial, personal and rather tragic circumstances she faced and not as a result of a deliberate and willful refusal to cooperate. These circumstances were described in detail by Ms. Chandler.

17. While the panel was sympathetic to the difficulties which Ms. Chandler faced, it concluded that the failure to respond, which extended over many months, was professional misconduct. Ms. Chandler was found guilty of the two charges.

SANCTION

18. Ms. Hersak filed a letter dated October 23, 2007 (Exhibit 7), from the Deputy Chair of the Professional Conduct Committee to Ms. Chandler which cautioned her that her conduct may have violated the rules of professional conduct. Ms. Hersak advised the panel that there had been two complaints concerning Ms. Chandler which resulted in the caution of October 2007. The first complaint was from the practice inspection and the second complaint was from a client with respect to the failure to prepare a tax return on a timely basis. Ms. Chandler attended a meeting of the Professional Conduct Committee in October 2007.

SUBMISSIONS AS TO SANCTION

19. Ms. Hersak acknowledged that when the Professional Conduct Committee gave her instructions on the sanction to seek, it did not have the information about Ms. Chandler's circumstances the Discipline Committee received at the hearing. The terms of the order which the Professional Conduct Committee sought included: a reprimand; a fine of \$2,500; an award of costs in the amount of \$2,500; an order that Ms. Chandler cooperate with Practice Inspection by filing the requested documents within 10 days of the order becoming final, failing which she would be suspended. The Professional Conduct Committee also sought the usual order with respect to publication, namely that notice be given to all members of the Institute, the Public Accountants Council for the Province of Ontario, the Provincial Institutes/Ordre and made available to the public.

20. Ms. Hersak submitted that the aggravating factors included: the length of time it had taken for Ms. Chandler to reply, in part, to Practice Inspection; the fact that she had still not provided all the required documents; and the fact that this failure to cooperate occurred before and after she appeared before the Professional Conduct Committee in October 2007.

21. Ms. Hersak submitted that the mitigating factors included: the fact that Ms. Chandler did attend the Professional Conduct Committee meeting; that she did comply in part with the requests of Practice Inspection; that she did cooperate with the discipline process; and that she attended the hearing and entered a plea of guilty.

22. Ms. Hersak submitted that a reprimand was necessary to emphasize to Ms. Chandler the seriousness of her misconduct.

23. Ms. Hersak submitted that a fine of \$2,500 was required as both a specific deterrent to Ms. Chandler and as a general deterrent to other members. She submitted that the fine requested was at the lower end of the range of appropriate fines for the misconduct in this case.

24. Ms. Hersak filed a Costs Outline (Exhibit 8) which disclosed that the costs incurred by the Institute for the investigation, prosecution and hearing were in excess of \$5,700.

25. Ms. Hersak submitted that the order should include a requirement that Ms. Chandler cooperate with Practice Inspection within a relatively short period of time to make it clear that she was willing and able to comply with the regulatory requirements of the Institute, failing which she should be expelled for her inability to do so.

26. Ms. Hersak also submitted that there were no unusual circumstances which warranted the withholding of publication of a notice disclosing Ms. Chandler's name.

27. Ms. Hersak referred to the cases of *Greer* (2007), *Yanush* (2007), *Croucher* (2008), *Carson* (2008), and *Presta* (2008), which she submitted supported the terms of the requested order.

28. Ms. Chandler acknowledged that it was appropriate for a self-governing profession to impose a sanction for misconduct. She pointed out that she had been suspended for an inability to pay her fees and that an order requiring her to pay more money would exacerbate the problems she already faced, as would publicity, given that she practised in a small town.

ORDER

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

IT IS ORDERED in respect of the charges:

1. THAT Ms. Chandler be reprimanded in writing by the chair of the hearing.
2. THAT Ms. Chandler be and she 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 Ms. Chandler cooperate with Practice Inspection by submitting the documentation requested in the letter dated November 1, 2007 from the Coordinator of Practice Inspection within 10 days of the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Ms. Chandler'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.
5. THAT in the event Ms. Chandler fails to comply with any of the requirements of this Order, she shall thereupon be suspended from the rights and privileges of membership in the Institute and her public accounting licence shall thereupon be suspended until such time as she does comply, provided that she complies within three (3) months from the date of her suspension, and in the event she does not comply within the three month period, she shall thereupon be expelled from membership in the Institute and her public accounting licence shall thereupon be revoked, and notice of her expulsion and licence suspension and revocation, disclosing her name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Ms. Chandler's practice and/or residence. All costs associated with the publication shall be borne by Ms. Chandler and shall be in addition to any other costs ordered by the committee.

REASONS FOR THE ORDER

30. The principle of sanction which should have priority in this case is rehabilitation. Ms. Chandler's failure to respond to Practice Inspection was not willful or deliberate.

31. While the principle of general deterrence is important and all members must know that they are required to cooperate with Practice Inspection, a relatively lenient order, given the extraordinary and unusual circumstances of this case, would not erode the principle which has been clearly established by the precedents that cooperation with Practice Inspection is fundamentally important and a failure to cooperate will not be tolerated.

32. The panel was also satisfied, in large part from the responses it received from Ms. Chandler during the course of the hearing, that she was genuinely remorseful and that if she can overcome the difficulties she faces, she will be a competent and productive member of the Institute, able to competently serve the relatively small community in which she lives.

Reprimand

33. A reprimand in writing by the Chair of the hearing is necessary to stress to Ms. Chandler that her conduct was unacceptable.

Fine

34. Given the circumstances of this case, particularly Ms. Chandler's limited financial resources, a fine of \$1,000 is a significant specific deterrent to her and a sufficient general deterrent to other members. As a result of her current financial difficulties, Ms. Chandler should have 12 months within which to pay the fine.

Cooperation

35. It is essential that Ms. Chandler demonstrate, within days of the order becoming final, that she can and will respond appropriately to the Institute and, in particular, to Practice Inspection.

Notice

36. The publication of a notice of the misconduct and the sanction imposed, which discloses the name of the member, is often the most significant sanction that can be imposed for the purposes of specific and general deterrence. Such a notice also informs the public that the chartered accounting profession takes its responsibility as a self-governing profession seriously. In this case, there were no rare and unusual circumstances that outweigh the need for publication of the notice disclosing the member's name.

Suspension or expulsion for failure to comply

37. Orders of the Discipline Committee which impose an obligation on a member, such as the payment of a fine or an order to cooperate would be meaningless if there were no consequences for failure to comply. Accordingly, the order in this case provides a suspension for failure to comply with the terms of the order, and if the failure to comply continues that the member shall be expelled.

38. In the event of the suspension of a member, the member's licence to practise public accounting is also suspended. Accordingly, the fact of the suspension of the member and of the member's licence should be made available to the public. In the event of expulsion from the Institute, with the consequent revocation of the member's licence to practise public accounting, notice is to be given in a newspaper published in the location where the member practised or resides. The costs of such publication shall be borne by the member.

Costs

39. An order for costs is not imposed as a sanction, but to indemnify the Institute, in whole or in part, for the costs of the proceedings. An order for costs is a financial obligation which the member must satisfy. In light of Ms. Chandler's financial circumstances, the panel concluded that it was not an appropriate case for costs, and that a further financial burden on Ms. Chandler would not assist her rehabilitation, which is the primary purpose of this order.

DATED AT TORONTO THIS 23rd DAY OF JUNE, 2009.
BY ORDER OF THE DISCIPLINE COMMITTEE

M.B. MARTENFELD, FCA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

M.S. LEIDERMAN, CA
B.M. SOLOWAY (PUBLIC REPRESENTATIVE)
H.G. TARADAY, CA