

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **GEORGE M. COLLATON**, a suspended member of the Institute, under **Rules 104.1 and 104.2(a)** of the Rules of Professional Conduct, as amended.

TO: Mr. George M. Collaton

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision and Order made October 19, 2011)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on October 19, 2011 to hear charges of professional misconduct brought by the Professional Conduct Committee (PCC) against George M. Collaton, a suspended member of the Institute.

2. Ms. Alexandra Hersak appeared on behalf of the PCC. Mr. Chris Hluchan represented Mr. Collaton, who attended throughout the hearing. Mr. Robert Peck attended the hearing as counsel to the Discipline Committee.

3. The decision of the panel was made known at the conclusion of the hearing on October 19, 2011, and the written Decision and Order sent to the parties on October 21, 2011. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, contain the charges, the decision, the order, and the reasons of the panel for its decision and order.

Charges

4. The following charges were laid against Mr. Collaton by the PCC on May 11, 2011:

1. THAT the said George M. Collaton, in or about the period March 5, 2010 to May 3, 2011, failed to co-operate with the regulatory process of the Institute contrary to Rule 104.1 of the Rules of Professional Conduct, in that he failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct a practice inspection.
2. THAT the said George M. Collaton, in or about the period August 26, 2010 to May 3, 2011, failed to co-operate with the regulatory process of the Institute contrary to Rule 104.2(a) of the Rules of Professional Conduct, in that he 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 August 12, 2010 and March 7, 2011 from Ms. Theresa Tonelli, CA, Director of Standards Enforcement at the Institute.

Plea

5. Mr. Collaton pleaded guilty to the two charges.

The proceedings

6. Ms. Hersak made an opening statement. She advised the panel that the case for the PCC would be presented by way of an Agreed Statement of Facts and a Document Brief. She then filed

the Agreed Statement of Facts (Exhibit 1) and the Document Brief (Exhibit 2). The Agreed Statement of Facts was signed by Mr. Collaton on his own behalf and by Ms. Hersak on behalf of the PCC.

7. In presenting the case for the PCC, Ms. Hersak reviewed the agreed statement and made reference to the relevant documents in the Document Brief. No other evidence was called on behalf of the PCC.

8. Mr. Hluchan advised the panel that he did not wish to present evidence at this time.

9. Ms. Hersak submitted that the evidence was clear, cogent and convincing and, as Mr. Collaton acknowledged, both in the Agreed Statement of Facts and by his plea of guilty, he should be found guilty. Mr. Hluchan made no submissions.

The Facts

10. Mr. Collaton was a sole practitioner. He was advised by letter dated January 29, 2010, that his practice had been selected for a practice inspection. He was asked to complete the appropriate forms not later than March 5, 2010. He did not do so. He was then advised by registered letter that he was required to complete and return his practice inspection forms on or before March 31, 2010. He was also told that if he failed to do so the matter would be referred to the PCC. Mr. Collaton did not submit his forms and the matter was referred to the PCC.

11. The Director of Standards Enforcement, Ms. Tonelli, CA, wrote to Mr. Collaton on August 12, 2010 advising him of a complaint and asking him to respond to the complaint on or before August 26, 2010. Mr. Collaton did not do so. Ms. Tonelli wrote to Mr. Collaton again on March 7, 2011, asking for a reply by March 22, 2011 and advising him that his failure to reply could result in a charge by the PCC. Mr. Collaton did not respond.

Decision

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

THAT, having heard the plea of guilty to Charge Nos. 1, and 2, and having seen and considered the evidence, including the agreed statement of facts, filed, the Discipline Committee finds George M. Collaton guilty of the charges.

Reasons for Decision

13. Given the Agreed Statement of Facts, the documents in the Document Brief, Mr. Collaton's acknowledgement that he did not respond to Practice Inspection or Standards Enforcement as required and alleged in the charges, the allegations made in the charges were proven. Mr. Collaton did not cooperate with Practice Inspection and his failure to do so constituted a violation of Rule 104.1. Further, Mr. Collaton did not respond to Standards Enforcement and his failure to do so constituted a violation of Rule 104.2(a).

14. Mr. Collaton's failure to cooperate with Practice Inspection means that his practice, which should have been inspected in 2010, remained uninspected at the date of the hearing and would likely remain uninspected for the remainder of the year. The Practice Inspection programme is an important regulatory activity of the Institute, Mr. Collaton's governing body. Failure to cooperate with Practice Inspection is misconduct and Mr. Collaton's failure to cooperate with Practice Inspection for over a year and a half, or to respond to Standards Enforcement in over a year, is clearly professional misconduct. Accordingly he was found guilty of the charges.

Sanction

15. The PCC did not call evidence with respect to sanction.

16. Mr. Hluchan advised that Mr. Collaton wished to make a statement to the panel. Mr. Collaton stated, under oath, that he was contrite and embarrassed about this matter, and apologized to the panel. Mr. Collaton explained that health problems in 2009 limited him physically and caused stress, resulting in the administrative aspects of his practice falling behind. His main focus of concern was to service his clients. He has now sought medical assistance and is planning to submit all fees and forms to activate his reinstatement to membership. Mr. Collaton stated that he works on his own and his practice consists of notice to reader, compilation and income tax engagements.

Submissions with respect to sanction

17. Ms. Hersak, on behalf of the PCC, submitted that an appropriate sanction would be: a written reprimand; a fine of \$3,500; an order that Mr. Collaton cooperate with Practice Inspection within 10 days and, in the event he fails to do so, that he should be suspended for a period of time, and if he still does not cooperate, that his membership be revoked; and the usual order with respect to publication. The PCC also sought an order for partial indemnity for approximately 50% of the costs of the investigation and hearing in the amount of \$3,000.

18. Ms. Hersak submitted that Mr. Collaton's failure to cooperate with Practice Inspection and failure to respond to Standards Enforcement, resulting in an investigation and hearing, were aggravating factors. Completing the forms is not an onerous task but necessary to the Practice Inspection process for all members in public practice. No explanation was provided to the PCC by Mr. Collaton and communications were met with complete silence.

19. Ms. Hersak acknowledged that the mitigating factors included the fact that Mr. Collaton had no previous involvement with the discipline process, had expressed remorse, pleaded guilty to the charges, had signed the Agreed Statement of Facts and now appeared willing to cooperate, although at the date of the hearing he had still not provided the requested forms.

20. Ms. Hersak submitted that the reprimand, the fine and publicity were required to both specifically deter Mr. Collaton from failing to cooperate in the future and as a general deterrent to dissuade other members from similar misconduct.

21. Ms. Hersak submitted that a term in the Order requiring Mr. Collaton to cooperate would provide him with the opportunity to show that he was both willing and able to comply with the regulatory requirements of the Institute, and enable Practice Inspection to carry out its mandate.

22. Ms. Hersak filed a Costs Outline (Exhibit 3) which showed that the costs of the investigation and hearing were approximately \$6,250. The PCC was seeking costs on a partial indemnity basis in the amount of \$3,000. Ms. Hersak said the PCC would not object to allowing a reasonable period of time to pay the fine and costs.

23. Ms. Hersak distributed a Case Brief containing five ICAO Discipline Committee cases involving failure to cooperate: *Kloosterman*, *Di Tomaso*, *Metzloff*, *Percival* and *Smith*. She pointed out that these cases resulted in orders similar to the order sought in this case by the PCC.

24. Mr. Hluchan submitted that Mr. Collaton was not making excuses for his behaviour and wanted the panel to know that he was willing to proceed with the Practice Inspection process. He stated that the discipline proceedings had been a "wake-up call" and would assist Mr. Collaton to move forward.

25. While he took no issue with the sanctions proposed, Mr. Hluchan submitted that since the hearing would not take a full day, the costs should be \$1,000 and asked the panel to consider allowing Mr. Collaton a 12-month period to pay the fine and costs.

Order

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Collaton be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Collaton be and he is hereby fined the sum of \$3,500 to be remitted to the Institute within six (6) months from the date this Decision and Order is made.
3. THAT Mr. Collaton co-operate by submitting the forms referred to in the letter from Practice Inspection dated January 29, 2010 within fifteen (15) days of the date this Decision and Order is made.
4. THAT notice of this Decision and Order, disclosing Mr. Collaton's name, be given after this Decision and Order is made:
 - (a) to all members of the Institute; and
 - (b) to all provincial institutes/Ordre;
 and shall be made available to the public.

IT IS FURTHER ORDERED:

5. THAT Mr. Collaton be and he is hereby charged costs fixed at \$2,000 to be remitted to the Institute within six (6) months from the date this Decision and Order is made.

AND IT IS FURTHER ORDERED

6. THAT in the event Mr. Collaton fails to comply with any of the requirements of this Order, he shall be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within thirty (30) days from the date of his suspension, and in the event he does not comply within the thirty (30) day period, his membership in the Institute shall be revoked, and notice of his membership revocation, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Collaton's practice and/or residence. All costs associated with the publication shall be borne by Mr. Collaton and shall be in addition to any other costs ordered by the committee.

Reasons for Sanction

27. With the exception of the quantum of costs, the panel concluded that the order sought by the PCC, for the reasons advanced by Ms. Hersak, was appropriate.

28. The panel concluded that the reprimand, the fine and the notice satisfied the principle of specific deterrence.

29. The panel concluded that the fine and notice satisfied the principle of general deterrence. The panel thought that the notice was particularly important in this case as publicity is the term of the order which would be the most effective general deterrent.

30. The principle of rehabilitation was addressed by the requirement that Mr. Collaton cooperate within 15 days, failing which he would be suspended and if the suspension continued for 30 days, his membership would be revoked. It is a privilege to be a chartered accountant and there are responsibilities which go with that privilege. One of the obligations is cooperation with the regulatory programmes of the Institute. If members are unwilling or unable to comply with the regulatory requirements, they will not retain the privilege of membership.

31. Should Mr. Collaton not provide Practice Inspection with the information requested by them, the profession cannot bear the risk of him remaining a member nor is it in the public interest for someone who does not meet the regulatory requirements of the profession to enjoy the designation. The choice of whether Mr. Collaton continues to practise within the discipline of the profession, or is removed from it, is his.

Costs

32. The proposed costs requested by the PCC contemplated a full-day hearing. As the hearing did not take the full day the panel considered this factor along with the submission of counsel for Mr. Collaton who requested that costs should be \$1,000. The panel concluded that costs fixed at \$2,000 were fair and appropriate. The costs are consistent with precedents and reflect the extended amount of time required by PCC to deal with the matter as a result of Mr. Collaton's failure to respond to the requests of both the Practice Inspection and the Professional Conduct sectors of the Institute.

33. Mr. Collaton caused the investigation and hearing, by his own conduct. It is appropriate that he, as opposed to the membership as a whole, bear a portion of the costs of the investigation and hearing.

DATED AT TORONTO THIS **8TH** DAY OF DECEMBER, 2011
BY ORDER OF THE DISCIPLINE COMMITTEE



S.M. DOUGLAS, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

A.R. DAVIDSON, CA
D.L. KNIGHT, FCA
S.B. WALKER (PUBLIC REPRESENTATIVE)