

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Allegations against **GEORGE ALEXANDER ROSS**, 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 A. Ross

**AND TO:** The Professional Conduct Committee, ICAO

**REASONS**  
**(Decision and Order February 8, 2012)**

1. This tribunal of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on February 8, 2012, to hear allegations of professional misconduct brought by the Professional Conduct Committee against George Alexander Ross, a suspended member of the Institute.
2. The Professional Conduct Committee (PCC) was represented by Alexandra Hersak. Mr. Ross attended and was unrepresented. He acknowledged that he understood he was entitled to be represented by counsel, and that he was waiving that right. Robert Peck attended the hearing as counsel to the Discipline Committee.
3. The decision of the tribunal was made known at the conclusion of the hearing on February 8, 2012. The written Decision and Order was sent to the parties on February 8, 2012. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegations, the decision, the order, and the reasons of the tribunal for its decision and order.

**ALLEGATIONS**

4. The following allegations were laid against Mr. Ross by the Professional Conduct Committee on November 1, 2011:
  1. THAT the said George A. Ross, in or about the period March 4, 2011 to October 4, 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 A. Ross, in or about the period June 16, 2011 to October 4, 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 May 31, June 28,

and August 18, 2011, from Ms. Theresa Tonelli, CA, Director of Standards Enforcement at the Institute.

## **THE PLEA**

5. Mr. Ross entered a plea of guilty to Allegation Nos. 1 and 2.

## **THE PROCEEDINGS**

6. Ms. Hersak made a brief opening statement and said that the evidence of the PCC would be provided by way of two affidavits; the affidavit of Mr. Grant Dickson, FCA, the Director of Practice Inspection, sworn on January 24, 2012 and the affidavit of Ms. Theresa Tonelli, CA, Director of Standards Enforcement, sworn on January 27, 2012. The Affidavits and the exhibits attached were included in a document brief entitled Document Brief February 2012 (Exhibit 1). Ms. Hersak reviewed the Affidavits and the exhibits to the Affidavits, particularly the letters sent from the Institute to Mr. Ross. Ms. Hersak did not present any other evidence with respect to the allegations.

7. Mr. Ross testified on his own behalf and was not cross-examined by Ms. Hersak. Mr. Ross also answered questions from the tribunal.

## **FACTS**

8. The relevant facts were not disputed. Mr. Ross confirmed the essential points made by Ms. Hersak. The relevant facts, as found by the tribunal, are set out in the following paragraphs.

9. Mr. Ross, a sole practitioner, was advised by letter dated January 31, 2011 that his practice had been selected for a practice inspection. He was asked to complete the appropriate forms not later than March 4, 2011. 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, 2011. He was also told that if he failed to do so the matter would be referred to the PCC. Mr. Ross did not submit his forms and the matter was referred to the PCC.

10. The Director of Standards Enforcement, Ms. Tonelli, CA, wrote to Mr. Ross on May 31, 2011 advising him of a complaint and asking him to respond to the complaint on or before June 16, 2011. Mr. Ross did not do so. Ms. Tonelli wrote to Mr. Ross again on June 28, 2011, asking for a reply by July 14, 2011 and advising him that his failure to reply could result in a charge by the PCC. In the absence of a response, Ms. Tonelli wrote to Mr. Ross again on August 4, 2011 reminding him that failure to respond by August 18, 2011 could result in a charge or charges under the Rules. Mr. Ross did not respond to Ms. Tonelli's letters. Ms. Tonelli wrote to Mr. Ross on August 18, 2011 requiring a response in writing by September 1, 2011 to the complaint that he had not cooperated with Practice Inspection.

11. Mr. Ross stated that he has never been in full-time practice. He has always operated a part-time practice from home with no employees or partners. During his previous two practice inspections, the same audit file, his only audit, was selected. Mr. Ross had been the auditor of this non-profit association for 13 years and was dissatisfied with the comment in the practice inspection report that there was not enough documentation of his knowledge of the client. Mr. Ross had resigned as the auditor of the client for the 2006 audit when his wife became a board member during 2005. Mr. Ross no longer performs audits or reviews, and has given up his

public accounting licence, since the amount he was paying in fees outweighed the fees received from the client. Mr. Ross stated that he now only prepares notice to reader, personal and corporate tax returns. Mr. Ross submitted that although he was disillusioned by the practice inspection process, he acknowledged it did not justify his lack of cooperation.

12. In response to questions from the tribunal, Mr. Ross stated that he has taken professional development courses but thought in 2008 that he was not on side with the requirements and had not used the CA designation since then.

## **DECISION**

13. After deliberating, the tribunal made the following decision:

THAT, having heard the plea of guilty to Allegation Nos. 1 and 2, and having seen, heard and considered the evidence, the Discipline Committee finds George Alexander Ross guilty of the allegations.

## **REASONS FOR THE DECISION**

14. In light of the relevant facts which are set out above, the tribunal concluded that the allegations had been proven and that Mr. Ross' failure to cooperate with Practice Inspection and Standards Enforcement constituted professional misconduct. Accordingly, the tribunal found him guilty of the allegations.

## **SANCTION**

15. Neither party called evidence with respect to sanction. Ms. Hersak and Mr. Ross made submissions to the tribunal.

16. The Professional Conduct Committee requested an order which included the following terms: a reprimand in writing by the Chair; a fine of \$3,500; an order that Mr. Ross cooperate with Practice Inspection within 20 days of the Decision and Order becoming final, and in the event he failed to do so that he should be suspended for a period of time, and if he still did not cooperate that his membership be revoked; and the usual order with respect to publication. The Professional Conduct Committee also asked for an order requiring Mr. Ross to partially reimburse the Institute for the costs of the proceedings.

17. Ms. Hersak submitted that the aggravating factor in this case was the lack of any response from Mr. Ross, despite numerous letters from both Practice Inspection and Standards Enforcement. If Mr. Ross had contacted Practice Inspection staff to discuss his concerns and complete the requested forms, this matter would not have come before the Discipline Committee. While still a member of the Institute, Mr. Ross has an obligation to cooperate with the processes and be governed by the rules. Ms. Hersak acknowledged that the mitigating factors included the fact that Mr. Ross had no previous involvement with the discipline process and that he attended before the tribunal. Mr. Ross now appeared willing to cooperate, although at the date of the hearing he had still not provided the requested forms or declaration.

18. Ms. Hersak submitted that the reprimand, the fine and the notice of the order were required to specifically deter Mr. Ross from failing to cooperate in the future. She also submitted that the fine and notice were required as a general deterrent to dissuade other members from similar misconduct.

19. Ms. Hersak submitted that a term in the order requiring Mr. Ross 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.

20. Ms. Hersak filed a Costs Outline (Exhibit 2) which set out the costs of the hearing, which was estimated to take one day, as just under \$6,000. Ms. Hersak stated that the Professional Conduct Committee was seeking \$3,000, approximately 50% of the costs. She acknowledged that the hearing did not last a full day and said that the tribunal might consider an adjustment to reflect this.

21. Ms. Hersak referred to the cases of *Hubbard*, *Collaton*, *Kloosterman*, *Di Tomaso* and *Metzloff* as precedents which supported the terms of the order requested. She stated that the PCC had no issue with allowing Mr. Ross a reasonable period of time to pay the fine and costs. Mr. Ross is obligated to respond to Practice Inspection and 15 to 20 days is a reasonable amount of time for him to comply.

22. Mr. Ross asked that the tribunal consider the limited revenue his practice generates in assessing the quantum of the fine and costs.

## ORDER

23. After deliberating, the tribunal made the following order:

IT IS ORDERED in respect of the allegations:

1. THAT Mr. Ross be reprimanded in writing by the Chair of the hearing.
1. THAT Mr. Ross 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.
2. THAT Mr. Ross co-operate by submitting the forms referred to in the letter from Practice Inspection dated January 31, 2011 within twenty (20) days of the date this Decision and Order is made.
3. THAT notice of this Decision and Order, disclosing Mr. Ross' 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:

4. THAT Mr. Ross be and he is hereby charged costs fixed at \$3,000 to be remitted to the Institute within six (6) months from the date this Decision and Order is made.

AND IT IS FURTHER ORDERED

5. THAT in the event Mr. Ross 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. Ross' practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Ross and shall be in addition to any other costs ordered by the tribunal.

## **REASONS FOR THE ORDER**

24. The Practice Inspection Program was established and is continued in the public interest to ensure that members practising public accounting do so in accordance with the standards of the profession. As Mr. Ross' practice was limited to notice to reader, personal and corporate tax returns, it would have been easy for him to cooperate and submit the required forms in the first place. Similarly, he could have easily responded to the Director of Standards Enforcement. Mr. Ross, as he recognized, had no justifiable reason not to cooperate. Both the public interest and the interest of the profession require the tribunal to order him to comply with the regulatory inspection program of the Institute if he is to continue as a member of the Institute, and to impose a sanction which will make it clear to Mr. Ross, the public and the profession that failure to comply with this regulatory program will not be tolerated.

### **Reprimand**

25. The tribunal ordered that Mr. Ross be reprimanded to emphasize to him the seriousness of his misconduct and the fact that it was unacceptable.

### **Fine**

26. The tribunal imposed a fine both as a specific deterrent to Mr. Ross and as a general deterrent to other members to dissuade them from similar misconduct. The tribunal concluded that the amount of the fine should be \$3,500 and that Mr. Ross should be given six months, from the time the Decision and Order becomes final, to pay the fine.

### **Cooperation**

27. The provision in the Order requiring Mr. Ross to cooperate within 20 days of the Order becoming final gives Mr. Ross the opportunity to demonstrate that he can comply with the regulatory requirements of the Institute. If he does so it will enable Practice Inspection to carry out its mandate. The consequences for failure to comply are set out in the Order.

### **Notice**

28. Publishing the names of members found guilty of professional misconduct is often the single most significant sanction that may be imposed on a member and is often the most effective general deterrent. As the notice serves both to inform the membership at large and offers a measure of protection to the public, it is only in the most exceptional circumstances that privacy considerations outweigh the need to inform both the membership and the public. No such circumstances were present in this case and, accordingly, the usual order for publication was made.

### **Suspension and Revocation for failure to comply**

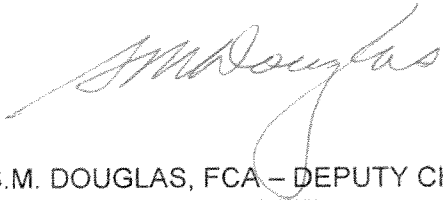
29. An order of the Discipline Committee which did not provide for consequences in the event a member fails to comply with terms of the order would be meaningless. Accordingly, as is usual, this order provides that if the member fails to comply with any of the terms of the order, he shall first be suspended and, if he still does not comply, his membership will be revoked.

30. This is particularly appropriate with respect to the term of the order requiring Mr. Ross to cooperate with Practice Inspection within 20 days of the order becoming final. If he cannot comply with the regulatory requirements of the Institute, he should not enjoy the privileges of membership. If his membership is revoked, notice of this shall be given on the Institute's website and in a newspaper or newspapers distributed in the area where he practises. The costs of the publication, as required by the bylaws, shall be borne by the member.

### **Costs**

31. Mr. Ross, the member responsible for the expense of the proceedings, should himself assume part of the costs. The costs requested by PCC were approximately half of the actual cost of the proceedings. The tribunal concluded that Mr. Ross should pay \$3,000 as a partial indemnity and, as with the fine, that he should be given six months, from the time the Decision and Order became final, to pay the costs.

DATED AT TORONTO THIS *10<sup>TH</sup>* DAY OF APRIL, 2012  
BY ORDER OF THE DISCIPLINE COMMITTEE



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

### **MEMBERS OF THE TRIBUNAL:**

S.R. LOWE, CA  
B.M. SOLWAY (Public Representative)  
R.A. WORMALD, FCA.