

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **GLEN EDWIN BYERS, CA**, a member of the Institute, under **Rules 104 and 203.2** of the Rules of Professional Conduct, as amended.

TO: Mr. Glen Edwin Byers, CA
312 Kirby Crescent
NEWMARKET, ON L3X 1H1

AND TO: The Professional Conduct Committee, ICAO

REASONS FOR THE DECISION AND ORDER MADE OCTOBER 2, 2002

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario convened on October 2, 2002 to hear charges brought by the professional conduct committee against Mr. Glen Byers, a member of the Institute.
2. The formal decision and order made on October 2 was signed by the committee secretary and sent to Mr. Byers on October 7, 2002. These reasons, given in writing pursuant to Bylaw 574, include the charges and the decision and order as well as the reasons of the discipline committee.
3. The professional conduct committee was represented by Ms. Barbara Glendinning.
4. Mr. Byers was not present in the Council Chamber when the hearing was scheduled to commence, and a search of the adjacent area by the discipline committee secretary failed to locate him. The chair reviewed a number of affidavits of service and attempted service that had been filed as exhibits at various assignment hearings. He then filed as exhibits the Notice of Hearing dated August 1, 2002, and a letter to Mr. Byers from the committee secretary dated September 26, 2002, both with proof of service, and both advising Mr. Byers of the October 2 hearing.
5. The panel reviewed the documents, and upon being satisfied that Mr. Byers had been properly served and was aware of these proceedings, decided to proceed in his absence pursuant to Bylaw 560.

THE CHARGES

6. The charges laid by the professional conduct committee dated May 20, 2002 read as follows:
 1. THAT the said Glen E. Byers, in or about the period March 6, 2002 to April 17, 2002, failed to promptly reply in writing to letters from the Institute dated and sent March 6, 2002 and April 2, 2002 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

2. THAT the said Glen E. Byers, in or about the period March 6, 2002 to May 17, 2002, failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct an investigation on behalf of the professional conduct committee, contrary to Rule 203.2 (b) of the rules of professional conduct.

In the absence of Mr. Byers, a plea of not guilty was entered on his behalf.

THE CASE FOR THE PROFESSIONAL CONDUCT COMMITTEE

7. Ms. Glendinning gave a brief overview of the case for the professional conduct committee, and filed a document brief which contained copies of the complainant's faxed complaint to the Institute, letters from the professional conduct committee to the member, and evidence of various unsuccessful attempts by the professional conduct committee to contact Mr. Byers.

8. The essence of the misconduct alleged was that Mr. Byers failed to comply with requests to respond to letters from the Institute, and failed to cooperate in the professional conduct committee investigation into the complaint made against him.

9. Upon deliberation, the committee concluded on the uncontradicted evidence that the charges had been proven and that Mr. Byers was guilty of professional misconduct. When the hearing reconvened, the chair read the following decision into the record:

DECISION

THAT, having seen, heard and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Byers 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 charges Nos. 1 and 2, the Discipline Committee finds Glen Edwin Byers guilty of charges Nos. 1 and 2.

ORDER WITH RESPECT TO SANCTION

10. After hearing submissions regarding sanctions from Ms. Glendinning, the committee deliberated, following which the chair read into the record the terms of the committee's order. The formal order sent to Mr. Byers reads as follows:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Byers be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Byers be and he is hereby fined the sum of \$3,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Byers be and he is hereby suspended from the rights and privileges of membership in the Institute for a period of three (3) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Byers cooperate with and to the satisfaction of the professional

conduct committee within ten (10) days from the date of his receipt or deemed receipt pursuant to Bylaw 107 of this Decision and Order.

5. THAT notice of this Decision and Order, disclosing Mr. Byers' 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*.
6. THAT Mr. Byers 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, to be held during the period of suspension and thereafter returned to Mr. Byers.
7. THAT in the event Mr. Byers fails to comply with any of 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 Newmarket Era-Banner* and *The Globe and Mail*.

Reprimand

11. The panel ordered that Mr. Byers be reprimanded in writing by the chair of the hearing in order to stress to him the unacceptable nature of his actions.

Fine

12. Mr. Byers' lack of cooperation with the professional conduct committee places the Institute in the difficult position of being unable to properly investigate a complaint raised by a member of the public. This is unacceptable. A fine serves as both a specific deterrent to this member and a general deterrent to like-minded members. Although a fine of \$5,000 was suggested by Ms. Glendinning on behalf of the professional conduct committee, the panel felt that a \$3,000 fine would be sufficient in the circumstances.

Suspension

13. The panel felt that a suspension of three months was warranted in order to convey the message to Mr. Byers that he cannot ignore the governing body of the profession of which he is a member. Not only has his lack of cooperation thwarted the Institute's ability to deal with a complaint from a member of the public, but Mr. Byers has demonstrated a disdain for the disciplinary process by not responding to attempted communications, and choosing not to attend or be represented at this hearing. The suspension might well have been longer had it not been for the fact that if he does not cooperate he will be expelled and there is some reason to think illness may be partly responsible for his failure to cooperate.

14. Mr. Byers was found guilty by the discipline committee on May 29, 2001 of a charge of failing to respond to a letter from the Institute in respect of a matter of professional conduct. As in this case, he failed to attend that hearing. In the earlier case, Mr. Byers was ordered to cooperate with the professional conduct committee or be suspended. He was able to avoid suspension following the order of May 29, 2001. There was some evidence in May 2001 that Mr. Byers was

suffering from a medical problem which he apparently overcame.

15. The more important issue in this case is expulsion. Mr. Byers is being ordered to cooperate or face expulsion. We hope he is able to avoid expulsion. But there must be an end to such conduct. Unless Mr. Byers demonstrates that he is able and prepared to adhere to the self-regulatory processes of the Institute, he will be expelled as being ungovernable and undeserving of membership.

Notice

16. Publishing names of members found guilty of professional misconduct is one of the most significant penalties that can be administered, and one which addresses both the individual issues of specific deterrence and rehabilitation, and the wider issues of general deterrence and education of the membership at large.

Return of Certificate

17. Mr. Byers' certificate of membership belongs to the Institute. As he has been ordered to be suspended, the certificate is to be surrendered.

DATED AT TORONTO THIS 5TH DAY OF NOVEMBER, 2002
BY ORDER OF THE DISCIPLINE COMMITTEE

H.B. BERNSTEIN, CA – DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

E.R. ARCHIBALD, CA
G.R. PEALL, CA
R.D. WHEELER, FCA
D.J. ANDERSON (Public representative)