

Gordon Scott Nicolle: Summary, as Published in CheckMark

Gordon Scott Nicolle, of North York, was found guilty of a charge under Rule 104 of failing to promptly reply to a letter from the Institute's associate director of standards enforcement relating to a matter of professional conduct. Mr. Nicolle was fined \$1,000, and ordered to respond to the letter within a specified time. It was further ordered that failure to comply with this requirement would result in his expulsion from membership in the Institute. As a result of Mr. Nicolle's failure to respond to the letter as ordered, he has been expelled from membership.

CHARGE(S) LAID re Gordon Scott Nicolle

The Professional Conduct Committee hereby makes the following charges against Gordon S. Nicolle, CA, a member of the Institute:

1. THAT, the said Gordon S. Nicolle, in or about the period August 21, 1995 to November 21, 1995, failed to cooperate with servants or agents of the Institute who were conducting an investigation on behalf of the professional conduct committee, in that he did not respond to two letters dated August 21, 1995 and October 25, 1995 from the associate director of standards enforcement which required his written comments on a complaint made against him, contrary to Rule 203.2 of the rules of professional conduct.

Dated at Toronto, this 21st day of November, 1995.

JENNIFER L. FISHER, CA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Gordon Scott Nicolle

DECISION AND ORDER IN THE MATTER OF: A charge against **GORDON SCOTT NICOLLE, CA**, a member of the Institute, under **Rule 104** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE SEPTEMBER 19, 1995

DECISION

THAT, having seen and considered the evidence, and having heard the plea of guilty to the charge, THE DISCIPLINE COMMITTEE FINDS Gordon Scott Nicolle guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Nicolle be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Nicolle be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Nicolle respond to the letter of March 29, 1995 from the Institute's associate director of standards enforcement 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. Nicolle's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants.
5. THAT in the event Mr. Nicolle fails to comply with the requirement of paragraph 2 of this Order within the time period therein specified, he shall thereupon be suspended from the rights and privileges of membership in the Institute, and notice of his suspension, disclosing his name, shall be given in the manner specified in paragraph 4 hereof.
6. THAT in the event Mr. Nicolle is suspended pursuant to paragraph 5 hereof, the suspension shall terminate upon his compliance with the requirement of paragraph 2, provided that he complies within thirty (30) days from the date of his suspension.

7. THAT in the event Mr. Nicolle fails to terminate a suspension imposed pursuant to paragraph 5 hereof within the thirty (30) day period specified in paragraph 6, 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 in paragraph 4 hereof.
8. THAT in the event Mr. Nicolle fails to comply with the requirement of paragraph 3 of this Order within the time period therein specified, 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 in paragraph 4 hereof.

DATED AT TORONTO THIS 21ST DAY OF SEPTEMBER, 1995
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Gordon Scott Nicolle

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: A charge against **GORDON SCOTT NICOLLE, CA**, a member of the Institute, under **Rule 104** of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE SEPTEMBER 19, 1995

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were held on September 19, 1995. Ms. Deborah McPhadden attended on behalf of the professional conduct committee. Mr. Nicolle represented himself and confirmed for the record that he understood he had the right to be represented by legal counsel. Mr. Harvey Mandelbaum, CA, was in attendance with Mr. Nicolle.

The professional conduct committee had laid the following charge against Mr. Nicolle, to which he pleaded guilty:

1. *THAT, the said Gordon S. Nicolle, CA, in or about the period March 29, 1995 to May 17, 1995, failed to promptly reply in writing to a letter from the Institute in respect of a matter of professional conduct signed by the associate director of standards enforcement and dated and sent March 29, 1995 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.*

The member confirmed that he understood that upon a plea of guilty, and upon that basis alone, he could be found guilty of the charge by the discipline committee.

Counsel for the professional conduct committee filed as an exhibit an affidavit signed by Jo Anne Olafson, CA, ICAO associate director of standards enforcement, and a document brief.

The evidence before the discipline committee was that a letter of complaint was received by the standards enforcement area about the conduct of Mr. Nicolle. The member was sent a letter, dated March 2, 1995, asking for his comments by March 22, 1995. On March 29, 1995, having received no reply from the member, Ms. Olafson sent a registered letter to him, again asking him for his comments. This letter advised him that if he failed to respond by April 19, 1995, the matter would be referred to the professional conduct committee and could result in a charge or charges being laid against him under the rules of professional conduct. Mr. Nicolle again did not respond, so was charged under Rule 104.

After reviewing the evidence before it, the discipline committee found Mr. Nicolle guilty of the charge.

The committee then heard submissions on sanction, and, upon deliberation, made the following order:

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Nicolle be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Nicolle be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Nicolle respond to the letter of March 29, 1995 from the Institute's associate director of standards enforcement 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. Nicolle's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants.
5. THAT in the event Mr. Nicolle fails to comply with the requirement of paragraph 2 of this Order within the time period therein specified, he shall thereupon be suspended from the rights and privileges of membership in the Institute, and notice of his suspension, disclosing his name, shall be given in the manner specified in paragraph 4 hereof.
6. THAT in the event Mr. Nicolle is suspended pursuant to paragraph 5 hereof, the suspension shall terminate upon his compliance with the requirement of paragraph 2, provided that he complies within thirty (30) days from the date of his suspension.
7. THAT in the event Mr. Nicolle fails to terminate a suspension imposed pursuant to paragraph 5 hereof within the thirty (30) day period specified in paragraph 6, 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 in paragraph 4 hereof.
8. THAT in the event Mr. Nicolle fails to comply with the requirement of paragraph 3 of this Order within the time period therein specified, 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 in paragraph 4 hereof.

The reasons for the discipline committee's order are briefly set out below. In determining the issue of sanction, the committee took into account the principles of general deterrence, specific deterrence and rehabilitation.

Reprimand

The committee is of the view that a reprimand is necessary as a specific deterrent to the member, to stress to him the unacceptability of his conduct as a chartered accountant.

Fine

The professional conduct committee requested a fine of \$1,000, which the discipline committee considered appropriate as both a general and a specific deterrent.

Response to the Institute letter

In order to reinforce for Mr. Nicolle, and other like-minded members of the profession the need to respond promptly to enquiries from the Institute's standards enforcement area, the discipline committee considered it necessary to order Mr. Nicolle to respond to the letter from the associate director of standards enforcement dated March 29, 1995, within seven days of the date of the decision and order becoming final. Failure to comply with this term of the order will result in Mr. Nicolle's immediate expulsion from the Institute.

Notice

The disciplinary process of a self-governing professional organization must be viewed by its members and the public as an open process. The member asked that his name not be published until completely unrelated litigation in which he is involved has been resolved. He stated that publicity might affect his credibility in that litigation, and damage his reputation. The committee did not find in the member's submissions those rare or unusual circumstances that might persuade it to withhold the member's name from publication or delay that publication, and, therefore, determined that the order as to notice, including disclosure of the member's name, was appropriate.

DATED AT TORONTO, THIS _____ DAY OF _____, 1995
BY ORDER OF THE DISCIPLINE COMMITTEE

D.P. SETTERINGTON, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

E.R. ARCHIBALD, CA
C.J. BURKE, FCA
P.B.A. CLARKSON, CA
B.A. TANNENBAUM, CA
S.F. ANDRUNYK (Public representative)