

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

**APPEAL COMMITTEE**

**IN THE MATTER OF:** An appeal by the Professional Conduct Committee, of the Decision and Order of the Discipline Committee made on November 19, 2009, pursuant to the bylaws of the Institute, as amended.

**TO:** The Professional Conduct Committee

**AND TO:** Mr. Ihor Dzubak

**REASONS**  
**(Decision Made April 25, 2012)**

1. This appeal was heard by a tribunal of the Appeal Committee of the Institute of Chartered Accountants of Ontario on April 25, 2012. Alexandra Hersak appeared on behalf of the Professional Conduct Committee (PCC). Mr. Dzubak did not attend and was represented by Glenn Stewart, appointed as *amicus curiae* to assist Mr. Dzubak in the appeal process. Peter Carey attended the hearing as counsel to the Appeal Committee.

2. The following charges were laid against Mr. Dzubak by the Professional Conduct Committee on July 15, 2009:

1. THAT the said Ihor Dzubak, in or about the period February 9, 2008 through August 31, 2008 applied to have his public accounting licence renewed and in so doing associated himself with statements or representations relating to his licence renewal application which he knew or should have known were false or misleading, contrary to Rule 103 of the Rules of Professional Conduct in that:
  - a. he declared that he performed public accounting services for "BLR LLP" but did not;
  - b. he declared that he performed public accounting services for "MMS LLP" but did not;
  - c. he declared that he performed public accounting services for "SDFP LLP" but did not;
  - d. he declared that "approximately 1400 compilation hours plus 900 taxation hours were performed for Leggatt Weatherhead CA's" when they were not; and
  - e. he declared that he performed public accounting services for "Scott & Co. CA's" which is not a CA firm.

2. THAT the said Ihor Dzubak, in or about the period March 4, 2009 to May 5, 2009, 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.
3. The Decision, and Order appealed from, made November 19, 2009, reads as follows:

### **DECISION**

THAT, having heard the plea of guilty to charge Nos. 1 and 2, and having seen, heard and considered the evidence, the Discipline Committee finds Ihor Dzubak guilty of charge Nos. 1 and 2.

### **ORDER**

IT IS ORDERED in respect of the charges:

1. THAT Mr. Dzubak be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Dzubak be and he is hereby fined the sum of \$3,000 to be remitted to the Institute within twenty-four (24) months of the date this Decision and Order becomes final under the bylaws, as follows:
  - (a) \$375 three (3) months from the date this Decision and Order becomes final under the bylaws, and
  - (b) \$375 every three (3) months thereafter until a total of \$3,000 has been remitted.
3. THAT Mr. Dzubak be and he is hereby permitted to resign his membership in the Institute, such resignation to be received in writing by the Registrar within two (2) months of this Decision and Order becoming final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Dzubak'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 all provincial institutes/Ordre,
 and shall be made available to the public.
5. THAT in the event Mr. Dzubak fails to comply with the requirements of paragraph 3 of this Order he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given by publication on the Institute's website and in a newspaper distributed in the geographic area of Mr. Dzubak's employment or residence. All costs associated with the publication shall be borne by Mr. Dzubak and shall be in addition to any other costs ordered by the committee.
6. THAT Mr. Dzubak surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days of his resignation or expulsion.

AND IT IS FURTHER ORDERED:

7. THAT Mr. Dzubak be and he is hereby charged costs fixed at \$5,000 to be remitted to the Institute within twenty-four (24) months from the date this Decision and Order becomes final under the bylaws, as follows:
  - (a) \$625 three (3) months from the date this Decision and Order becomes final under the bylaws, and;
  - (b) \$625 every three (3) months thereafter, until a total of \$5,000 has been remitted.
4. On this appeal, the PCC seeks to have paragraph 3 of the Order of the Discipline Committee vacated and substituted with an order for revocation of Mr. Dzubak's membership, including newspaper publicity.
5. The tribunal reviewed and heard submissions made by Ms. Hersak and Mr. Stuart, including the Appeal Book (Appeal Book Index filed as Exhibit 1), factums and books of authorities.

***Submissions***

6. Ms. Hersak, on behalf of the PCC, submitted that the issues to be determined are whether it was unreasonable to permit Mr. Dzubak to resign in light of the facts proven in evidence and whether the sanction imposed was unreasonable in light of the seriousness of Mr. Dzubak's misconduct. It was the position of the PCC that the Discipline Committee had misapplied the principles of sentencing and placed insufficient weight on general deterrence when imposing sanction.
7. Ms. Hersak submitted that Mr. Dzubak knew that his assertions to the Public Accounting Licensing Board were false and he chose to provide incorrect information in order to obtain a public accounting licence. During the course of the investigation, Mr. Dzubak was aware of what was required of him but chose not to comply and declined to be interviewed by the investigator. The dishonesty of Mr. Dzubak to his professional body is moral turpitude and Ms. Hersak submitted that the sanction imposed does not fall within the acceptable range for this type of misconduct.
8. Ms. Hersak submitted that in the course of applying for a public accounting licence, Mr. Dzubak declared that he had performed public accounting services for certain chartered accounting firms but when the Institute attempted to confirm the representations, they were found to be false. The matter was referred to the PCC who appointed an investigator. Mr. Dzubak declined to meet with the investigator, telling him he was "medically challenged", but did not provide any independent medical evidence to support his contention.
9. In the Discipline Committee's reasons, it was noted that while Mr. Dzubak's responses were colourful and digressive, they were also responsive to the concerns raised. The Discipline Committee had also stated that Mr. Dzubak had been responsive to staff and the investigator. Although his responses contained irrelevant comments and did not provide the information sought, it was clear that he was aware of what was required of him. Ms. Hersak submitted that Mr. Dzubak's responses indicated he was clearly aware of what was being requested of him and capable of understanding and choosing whether to fulfil the requirements.

10. Ms. Hersak stated that Mr. Dzubak had left the discipline hearing, stating he was ill. There was no medical evidence put before the Discipline Committee indicating the nature of any medical condition or how it would affect Mr. Dzubak. Mr. Dzubak had told the investigator he had a nervous breakdown as a result of his dealings with Institute staff involved with the Public Accounting Licensing Board but Mr. Dzubak did not provide this information at the discipline hearing. Ms. Hersak submitted that Mr. Dzubak's conduct during the hearing might be considered unusual but without any evidence to substantiate a medical condition, there is no way of knowing if he was just being uncooperative. Ms. Hersak stated that many members who have done wrong attempt to avoid the investigation process by refusing to cooperate.

11. Ms. Hersak referenced cases contained in the Appellant's Supplemental Book of Authorities including *Law Society of Upper Canada v. Vance* which deals with non-cooperation of a lawyer who requested permission to resign without tendering any medical evidence. Ms. Hersak also referred to the *McCutcheon* case in the Appellant's Brief of Authorities. Mr. McCutcheon had asked to resign in view of an addiction problem. In the case of Mr. Dzubak, Ms. Hersak submitted that he had made no request to resign. There was limited information before the Discipline Committee who had arrived at the conclusion that there was some medical cause behind Mr. Dzubak's actions. Mr. Dzubak had not provided any medical evidence by way of doctors' reports or testimony. Ms. Hersak referred to cases involving ungovernability and/or moral turpitude which resulted in expulsion.

12. Ms. Hersak stated that the Discipline Committee, by permitting Mr. Dzubak to resign, did not place specific weight on general deterrence which is paramount in this case. Mr. Dzubak had pleaded guilty, made statements about medical problems without providing any evidence, and had made no request to resign.

13. Mr. Stuart submitted that he was acting as *amicus curiae* in the unusual circumstances of this case. Although he did not have instructions from Mr. Dzubak, he would put forward an argument on his behalf. Based on Mr. Dzubak's behaviour before the Discipline Committee, and the evidence of his earlier dealings with the Professional Conduct Committee, Mr. Stuart noted there is a serious issue as to whether Mr. Dzubak understands the nature of the proceedings and is able to instruct counsel. Mr. Stuart stated that he had been retained to ensure proper responses to the issues raised by the Appellant to ensure the fairness of the proceedings.

14. In respect to the test to be met before the Appeal Committee can or should interfere with a decision of the Discipline Committee, Mr. Stuart submitted that the issue is not if this tribunal would have reached a different conclusion but if the sanction imposed falls outside the range of what is reasonable. Mr. Stuart stated that with the same evidence before it, a different panel may reach a different conclusion but this does not mean the conclusion reached was in error or is unreasonable.

15. Mr. Stuart submitted that there were a number of instances of unusual behaviour exhibited by Mr. Dzubak prior to and during the discipline hearing that would indicate something was wrong. Mr. Dzubak had spoken to the PCC investigator indicating he had had a nervous breakdown and had sought psychiatric assistance. Mr. Stuart submitted that Mr. Dzubak had made several confusing remarks to the investigator and sent a letter indicating he would cooperate in the investigation upon receiving medical clearance. Mr. Dzubak had also indicated he was being assisted by a care provider who has Power of Attorney. At the end of his evidence before the Discipline Committee, Mr. Dzubak acknowledged he would never be involved in public accounting or any form of accounting again.

16. Mr. Stuart submitted that the Discipline Committee had the authority under the bylaws to allow Mr. Dzubak to resign and there was no provision stating that the member had to make a request to resign. Mr. Stuart referenced the *Steele* decision in his book of authorities which noted there may be mitigating circumstances which would provide a basis for exercising compassion and allowing permission to resign. Mr. Stuart noted that Mr. Dzubak had offered his resignation subsequent to the Discipline hearing but it could not be accepted pending the outcome of the appeal.

17. Mr. Stuart submitted that according to the transcript, Mr. Dzubak had demonstrated confusion relating to the hearing but had attempted to cooperate and facilitate the hearing process by pleading guilty, although he seemed unsure of his guilt. During the discipline hearing, Mr. Dzubak had advised that he was not well enough to handle the proceedings, could not remain but was content that the hearing continue in his absence.

18. In response to issues raised by the appellant, Mr. Stuart submitted that there was admissible evidence before the Discipline Committee upon which the committee could base its conclusion that Mr. Dzubak ought to be given permission to resign his membership. Mr. Stuart submitted that allowing Mr. Dzubak to resign was not outside the range of reasonable conclusions. While general deterrence is an important factor, Mr. Stuart stated that it does not necessarily prevail over all other relevant factors when determining an appropriate penalty.

19. Mr. Stuart submitted that the Discipline Committee had accepted that Mr. Dzubak's conduct was impacted by his underlying medical issues. There was no indication that he was trying to avoid the process. The Discipline Committee had also considered that no members of the public had been placed at financial risk by Mr. Dzubak and he had no discipline history.

20. Mr. Stuart submitted that the appeal should be dismissed and the decision of the Discipline Committee be affirmed.

21. Ms. Hersak responded that the Discipline Committee may have been in the unique position to observe Mr. Dzubak during the hearing but did not have the benefit of dealing with Mr. Dzubak's conduct during the course of the PCC investigation. Mr. Dzubak may have been upset on the day of the hearing but there was not sufficient evidence of a medical condition.

### ***Decision***

22. This panel of the Appeal Committee considered all the submissions, as well as the material filed in this matter and, after deliberations, dismissed the appeal. The parties were informed of the decision at the conclusion of the appeal, and were provided with a written Order dated April 27, 2012, as follows:

HAVING heard and considered the submissions made on behalf of the Professional Conduct Committee and on behalf of Ihor Dzubak, and having reviewed all of the documentation provided by the parties, the Appeal Committee dismisses the appeal of the Order of the Discipline Committee made on November 19, 2009.

### ***Reasons***

23. As has been stated in numerous previous appeals, it is not the role of the Appeal Committee to retry the case or to substitute its judgment for that of the Discipline Committee.

Rather, the Appeal Committee is to consider the record and determine, based on that record, whether the findings of fact made by the Discipline Committee are supported by the evidence, and whether the decision is supported by the facts and the law.

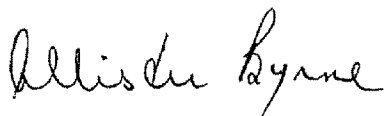
24. The relevant facts in this matter were that Mr Dzubak had demonstrated on several occasions throughout the investigation and hearing process that he had a medical condition. While there was no independent medical evidence provided, the Discipline Committee clearly witnessed Mr Dzubak's condition during the proceedings. Also, it was noted that at no time during the discipline process did Mr Dzubak seek permission to resign. It was also evident that the Discipline Committee noted the seriousness of Mr. Dzubak's actions, knew that ungovernability is a reason for expulsion, was fully versed in the principle of general deterrence and had referenced relevant case law.

25. The Appeal Committee had a clear understanding of the facts of this case and fully understood that the Professional Conduct Committee was appealing that the order for resignation made by the Discipline Committee be changed to revocation.

26. In arriving at its decision to uphold the decision of the Discipline Committee, the tribunal concluded that Mr Dzubak's medical condition was a major influence in leading to the Discipline Committee's decision as to sanction. The Discipline Committee showed compassion for Mr Dzubak's apparent condition in rendering its decision as to sanction. The Discipline Committee had the opportunity to observe Mr. Dzubak. The Appeal tribunal did not. As a result, it would be inappropriate for this tribunal to interfere in the decision of the Discipline Committee in this regard.

27. As to whether the ability to resign falls within the reasonable range of sanctions in instances of moral turpitude, the tribunal concluded that it was reasonable for the Discipline Committee to take all of the circumstances into consideration when it made a determination as to sanction. In a matter of moral turpitude, the principle of general deterrence may not always be the sole determining criteria.

DATED AT TORONTO THIS <sup>4<sup>th</sup></sup> DAY OF JULY, 2012.  
BY ORDER OF THE APPEAL COMMITTEE



A.R. BYRNE, FCA – CHAIR  
APPEAL COMMITTEE

MEMBERS OF THE PANEL:

R.H. CARRINGTON (PUBLIC REPRESENTATIVE)  
J.F. OLAFSON, CA  
W.R. SCHMIDT, CA  
M. STEBILA, CA

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Charges against **IHOR DZUBAK**, a suspended member of the Institute, under **Rules 103 and 203.2(b)** of the Rules of Professional Conduct, as amended.

**TO:** Mr. Ihor Dzubak

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

**REASONS**

**(Decision and Order made November 19, 2009)**

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on November 19, 2009 to hear charges of professional misconduct brought by the Professional Conduct Committee against Ihor Dzubak, a suspended member of the Institute.

2. Alexandra Hersak appeared on behalf of the Professional Conduct Committee. Mr. Dzubak attended for most of the hearing, and was unrepresented. He acknowledged he understood he had the right to be represented by counsel and was waiving that right. Elizabeth Cowie acted as counsel for the Discipline Committee.

3. The decision of the panel was made known at the conclusion of the hearing, and the written Decision and Order sent to the parties on November 27, 2009. These reasons, given pursuant to Bylaw 574, contain the charges, the decision, the order, and the reasons for the decision and order.

**CHARGES**

4. The following charges were laid against Mr. Dzubak by the Professional Conduct Committee on July 15, 2009:

1. THAT the said Ihor Dzubak, in or about the period February 9, 2008 through August 31, 2008 applied to have his public accounting licence renewed and in so doing associated himself with statements or representations relating to his licence renewal application which he knew or should have known were false or misleading, contrary to Rule 103 of the Rules of Professional Conduct in that:
  - a. he declared that he performed public accounting services for "BLR LLP" but did not;
  - b. he declared that he performed public accounting services for "MMS LLP" but did not;
  - c. he declared that he performed public accounting services for "SDFP LLP" but did not;

- d. he declared that “approximately 1400 compilation hours plus 900 taxation hours were performed for Leggatt Weatherhead CA’s” when they were not; and
  - e. he declared that he performed public accounting services for “Scott & Co. CA’s” which is not a CA firm.
2. THAT the said Ihor Dzubak, in or about the period March 4, 2009 to May 5, 2009, 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.

## **PLEA**

5. Mr. Dzubak attempted to enter a plea of “guilty with an explanation” to both charges. The panel satisfied itself that Mr. Dzubak understood the proceedings, and that his “explanation” did not go to the issue of guilt, but was in mitigation of the gravity of the conduct alleged. Mr. Dzubak changed his plea to guilty on both charges, which plea was accepted by the panel.

## **EVIDENCE**

6. Mr. Dzubak indicated he had not been provided with the evidence of the Professional Conduct Committee prior to the hearing. The panel heard submissions on this issue, and reviewed the Affidavits of Service of the materials (Exhibits 4 and 5), and was satisfied that Mr. Dzubak had been provided with disclosure and that, if the disclosure had not come to his attention, it was by reason of his inaction. The panel provided Mr. Dzubak with time to review the materials prior to the commencement of the evidence.

7. The Professional Conduct Committee called two witnesses, and filed a number of affidavits. Mr. Dzubak was given the opportunity to cross-examine the witnesses, and declined to do so.

8. Mr. Dzubak gave evidence on his own behalf. He stated that, based on the wording of the charges, he was guilty, and provided an explanation of his intention in acting as he did.

## **FACTS**

9. Most of the facts in this matter are not complex or contested. Mr. Dzubak’s public accounting licence expired on November 1, 2007. He applied to renew his licence and filed the required form, “Declaration in Respect of Practising Public Accounting” (“Declaration”), declaring he had performed 3100 public accounting hours over the previous five years. The form was signed, apparently by Mr. Dzubak, and dated February 9, 2008 (Exhibit 3, Tab 1B).

10. Mr. Dzubak’s application was considered by the Public Accounting Licensing Board of the Institute, and was denied, on the basis that Mr. Dzubak was employed in industry and, as such, the hours had been obtained outside the practice of public accounting and were not eligible.

11. Mr. Dzubak wrote to the Institute stating his employment information was incorrect, and that he had not been employed in industry since 2002. In the same letter he listed a number of public accounting firms for which he had performed eligible hours (Exhibit 3, Tab 1I).



12. In particular, Mr. Dzubak stated he had performed approximately 1400 compilation hours and 900 taxation hours for Leggett Weatherhead CAs.

13. The Institute attempted to confirm this information with the principal of that firm, who replied that "Mr. Dzubak did not work on any compilation files". He further stated he "used Mr. Dzubak for bookkeeping with regard to certain tax returns." (Exhibit 3, Tab 1J) Bookkeeping functions are not eligible as public accounting hours. Further, the firm had not used the name "Leggett Weatherhead CAs" for a number of years.

14. As a result of this information, Mr. Dzubak was asked to provide a clarification of the public accounting hours he had declared. He stated he had performed the hours declared, but that the firms didn't want to admit to it because they didn't want to become involved.

15. The Institute queried all the other firms Mr. Dzubak had listed as the source of his declared hours: BLR LLP; MMS LLP; SDFP LLP; Scott & Co.; and S&H. The principals of all but the last named firm responded that Mr. Dzubak had performed no public accounting services for them. Further, Scott & Co. is not a chartered accounting firm but trustees in bankruptcy. The last firm queried, S&H, did indicate that Mr. Dzubak had performed 56 ¼ eligible hours in taxation. S&H does not form part of the charges.

16. Having gathered this information, the Public Accounting Licensing Board again denied Mr. Dzubak's application for a licence, and referred the matter to the Professional Conduct Committee.

17. Andrew Shin, CA•IFA, was retained by the Professional Conduct Committee to investigate allegations that Mr. Dzubak had declared public accounting hours he had not performed. Mr. Shin contacted Mr. Dzubak to attempt to set up an interview with him. Mr. Dzubak declined to meet with Mr. Shin, stating there was nothing further to discuss, and he no longer wished a public accounting licence.

18. Mr. Shin followed up with a request in writing for an interview, suggesting dates and times. Mr. Dzubak responded that he was "currently medically challenged" and would advise when he had "medical clearance" to arrange an interview (Exhibit 6, Tab 7). He did not contact Mr. Shin again.

19. Mr. Dzubak was sent a notice to attend before the Professional Conduct Committee (Exhibit 6, Tab 8). He did not respond to that notice. He did not attend as required in the notice, and provided no explanation or documentation to excuse his absence.

## **SUBMISSIONS**

20. Ms. Hersak, on behalf of the Professional Conduct Committee, submitted that the evidence was clear, cogent and compelling proof of the charges, and that Mr. Dzubak should be found guilty on both counts.

21. During the course of Ms. Hersak's submissions, Mr. Dzubak became agitated and left the hearing room, asking that the hearing continue in his absence. An immediate recess was called, and efforts were made to have Mr. Dzubak return.

22. Mr. Dzubak did return briefly, and stated he was waiving his right to participate further in the hearing or to be present for its conclusion. He did not seek a further recess or an adjournment. He then left.

23. The panel decided to continue the hearing in the absence of Mr. Dzubak, pursuant to the provisions of Bylaw 560, and Ms. Hersak concluded her submissions.

## **FINDING**

24. The panel weighed all the evidence before it in determining whether, on the balance of probabilities, Mr. Dzubak had committed professional misconduct in the manner set out in the charges. As well as the facts set out above, the panel considered the evidence provided by Mr. Dzubak as to his medical difficulties, its observations of his demeanour and interactions during the hearing, and his admission of guilt.

25. With respect to the charge of false or misleading documents, the evidence is clear that Mr. Dzubak did not perform public accounting services for the firms listed in that charge, contrary to his assertion to the Institute. As well, Mr. Dzubak exhibited a cavalier attitude towards the completion of the Declaration, by using estimates rather than actual hours based on any form of records. Not only is this approach negligent, the declared do not even approximate those he provided as further clarification to the Institute (Exhibit 3, Tab 1N) or those determined by the Institute in the course of its investigation.

26. However, the finding the assertions were inaccurate does not end the matter. The essence of the charge is that Mr. Dzubak made the statements when he knew or ought to have known they were false and misleading. The question that must be answered is whether, given his medical state, Mr. Dzubak did, or could, apprehend that what he was asserting was wrong, and the effect of that assertion.

27. The panel has concluded he did. The Public Accounting Licensing Board considered Mr. Dzubak's application for a licence on three separate occasions, each time at Mr. Dzubak's request. He clearly understood his application had been denied on the first two occasions due to his apparent employment in industry, because he responded to correct that employment history and to provide details of public practice employers. He listed those employers with specifics, and noted which one he had performed most of the work for (Weatherhead).

28. When he was challenged on the list, he reiterated its accuracy, and explained the firms didn't want to confirm the hours (Exhibit 3, Tab 1K). He also provided more details concerning one of the firms. He did no work whatsoever for some of those firms, including one which was a successor to a firm in which he had been a masthead partner.

29. While Mr. Dzubak's responses to the Institute were colourful and digressive, they were also responsive to the concerns raised. He knew he had to establish he had performed a sufficient number of eligible hours in order to be granted a public accounting licence, and he chose to provide the Institute with incorrect information in order to gain that benefit. His intent was to misrepresent his background in order to obtain a licence. He is guilty of the first charge.

30. With respect to the charge of failing to cooperate with the Professional Conduct Committee and its investigator, the evidence is clear that Mr. Dzubak did not cooperate. He would not agree to an interview or a meeting with the investigator, and he, without explanation, failed to attend before the Professional Conduct Committee. All members, by reason of the *Rules of Professional Conduct*, are required to do all the things Mr. Dzubak declined or refused to do.

31. Again, however, the issue of finding does not end there. A member is not to be found guilty of professional misconduct for matters entirely beyond his control. Given Mr. Dzubak's medical state, upon which we have only Mr. Dzubak's testimony, as he provided no independent medical evidence, the question that must be answered is whether he had the capacity to understand what was required of him, and to decide whether to comply.

32. The investigation by the Professional Conduct Committee is set out in the testimony of Mr. Shin and in Exhibit 6. The panel has reviewed that evidence. Mr. Dzubak responded at every phase of the investigation, to both Institute staff and the investigator. His responses did not provide the information sought, and they contained a significant amount of irrelevant comments, but they also make clear he was both aware of what was being required of him and capable of choosing how and whether to fulfill the requirements.

33. To phrase it more simply, Mr. Dzubak knew what was required of him, and chose not to comply. He is guilty of the second charge.

## **DECISION**

34. Having deliberated and made its findings, the panel made the following decision:

THAT, having heard the plea of guilty to charge Nos. 1 and 2, and having seen, heard and considered the evidence, the Discipline Committee finds Ihor Dzubak guilty of charge Nos. 1 and 2.

## **SANCTION**

35. The Professional Conduct Committee sought a sanction of: a written reprimand; a fine in the amount of \$5,000; expulsion; and full publicity. It also sought 50% of the costs of the investigation and hearing, and filed a Costs Outline (Exhibit 8) detailing a total of just under \$30,000, of which \$10,000 was the amount requested.

36. Ms. Hersak characterized the offences as ones of both integrity and governability, and urged the panel to find general deterrence to be the paramount principle of sanctioning.

37. In mitigation, she noted that Mr. Dzubak initially responded to the investigation, and entered a plea of guilty at the hearing. She submitted these factors were far outweighed by those in aggravation, including that: Mr. Dzubak certified the false information to be true; he tried to convince another chartered accountant to lie for him; he refused to meet with the investigator; and he didn't attend the Professional Conduct Committee meeting and provided no response or explanation for that non-attendance. She also submitted the conduct was deliberate rather than inadvertent.

38. Specifically with respect to the request for expulsion, Ms. Hersak submitted that Mr. Dzubak, by his actions and attitude, had demonstrated his ungovernability, and noted that the Institute cannot regulate those who won't be regulated.

## **ORDER**

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Dzubak be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Dzubak be and he is hereby fined the sum of \$3,000 to be remitted to the Institute within twenty-four (24) months of the date this Decision and Order becomes final under the bylaws, as follows:
  - (a) \$375 three (3) months from the date this Decision and Order becomes final under the bylaws, and
  - (b) \$375 every three (3) months thereafter until a total of \$3,000 has been remitted.
3. THAT Mr. Dzubak be and he is hereby permitted to resign his membership in the Institute, such resignation to be received in writing by the Registrar within two (2) months of this Decision and Order becoming final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Dzubak'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 all provincial institutes/Ordre,and shall be made available to the public.
5. THAT in the event Mr. Dzubak fails to comply with the requirements of paragraph 3 of this Order he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given by publication on the Institute's website and in a newspaper distributed in the geographic area of Mr. Dzubak's employment or residence. All costs associated with the publication shall be borne by Mr. Dzubak and shall be in addition to any other costs ordered by the committee.
6. THAT Mr. Dzubak surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days of his resignation or expulsion.

**AND IT IS FURTHER ORDERED:**

7. THAT Mr. Dzubak be and he is hereby charged costs fixed at \$5,000 to be remitted to the Institute within twenty-four (24) months from the date this Decision and Order becomes final under the bylaws, as follows:
  - (a) \$625 three (3) months from the date this Decision and Order becomes final under the bylaws, and;
  - (b) \$625 every three (3) months thereafter, until a total of \$5,000 has been remitted.

**REASONS**

40. Mr. Dzubak attempted to convince the body responsible for issuing his public accounting licence that he was worthy of that licence. He did so by making assertions that were not true. For a member of a regulated profession to lie to his regulator is a very serious matter, and must be

treated as such. Chartered Accountants have earned the trust of the public by nurturing and guarding a reputation for probity and integrity. One member's breach of those values could destroy the reputation of the entire profession. That is unacceptable.

41. The quantum of the fine and costs ordered in this matter is lower than would be warranted for the offences of which Mr. Dzubak has been found guilty, were it not for his personal circumstances, both medical and financial. The panel has evidence he has worked without compensation, and also that he has had difficulties managing his finances, and has appointed a person to do so. The lengthy time to pay and the instalments ordered are intended to assist with that financial management and to ensure the amounts ordered do not cross the line from deterrence and denunciation to punishment.

42. On the evidence, and from Mr. Dzubak's presentation to this panel, it must be concluded Mr. Dzubak is not prepared to accept advice, restrictions or prohibitions unless it suits his own purposes. He cannot be governed; therefore, he cannot remain a member of the Institute.

43. In ordinary circumstances, a finding of ungovernability would result in an order of expulsion. However, the panel has concluded that Mr. Dzubak's lack of governability may have been impacted by his medical circumstances. In his appearance before this panel, he seemed to be in some distress, and was unable to consistently focus on presenting his case to his advantage. We have found him to be responsible for his actions, and have found those actions to constitute serious professional misconduct. We have concluded he would not obey any strictures laid on him by the Institute. We have also concluded his difficulties may have been exacerbated by matters beyond his control. Further, while the Institute was harmed by his actions, no member of the public was placed at financial risk. For these reasons, it is appropriate to offer him the opportunity to leave the profession without suffering the ultimate humiliation of being expelled.

DATED AT TORONTO THIS 14<sup>TH</sup> DAY OF DECEMBER, 2009  
BY ORDER OF THE DISCIPLINE COMMITTEE

A.D. NICHOLS, FCA – DEPUTY CHAIR  
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

S.M. DOUGLAS, FCA  
B.M. SOLWAY (PUBLIC REPRESENTATIVE)  
H.G. TARADAY, CA