

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: A charge against **JAMES EDWARD HORN, CA**, a member of the Institute, under **Rule 202** of the Rules of Professional Conduct, as amended.

TO: Mr. James E. Horn, CA
Horn Almand Chartered Accountants
67 Mowat Avenue, Suite 444
TORONTO, ON M6K 3E3

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision and Order made December 15, 2008)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario convened on December 15, 2008, to hear a charge of professional misconduct brought by the Professional Conduct Committee against James Edward Horn, CA, a member of the Institute.
2. Alexandra Hersak appeared for the Professional Conduct Committee. She was accompanied by Ken Froese, CA, the investigator appointed by the Professional Conduct Committee.
3. Mr. Horn appeared on his own behalf and confirmed for the record that he understood he was entitled to be represented by counsel, and that he was waiving that right.
4. The decision of the panel and the terms of the order were made known at the hearing on December 15, 2008. The written Decision and Order was sent to the parties on December 22, 2008. These reasons, given pursuant to Bylaw 574, include the charge, the decision, the order, and the reasons of the panel for its decision and order.

CHARGE

5. The following charge (Exhibit 3) was laid against Mr. Horn by the Professional Conduct Committee on July 23, 2008:

1. THAT the said James E. Horn, in or about the period June 1, 2007 through November 30, 2007 while engaged to conduct a compliance audit of the 2006 campaign finances of "JM" in accordance with the *Municipal Elections Act, 1996* (the "Act") failed to perform his professional services with due care contrary to Rule 202 of the Rules of Professional Conduct in that:
 - a. He failed to conduct appropriate audit procedures to enable him to determine the existence of apparent contraventions of the Act;

- b. He failed to perform an adequate or appropriate audit of campaign contributions;
- c. He failed to perform an adequate or appropriate audit of expenses related to campaign banners and to identify related apparent contraventions of the Act in his compliance audit report; and
- d. He failed to appropriately disclose a scope limitation related to the audit of advertising expenses in his compliance audit report.

PLEA

6. Mr. Horn entered a plea of guilty to the charge and confirmed for the record that he understood that on the basis of his plea of guilty, and on that basis alone, he could be found guilty of the charge.

PROCEEDINGS

7. Ms. Hersak filed an Agreed Statement of Facts (Exhibit 4). Ms. Hersak also filed a Document Brief (Exhibit 5) and a Brief of Authorities (Exhibit 6) which consisted of a copy of the *Municipal Elections Act, 1996* and a copy of the letter from Timothy J. Wilkin, Barrister and Solicitor, to the Corporation of the City of Hamilton dated March 3, 2006.

8. Ms. Hersak gave an overview of the case for the Professional Conduct Committee. In doing so, she referred to the Agreed Statement of Facts, the Document Brief and the Brief of Authorities. She then took the panel through the four elements of the charge making specific reference to the relevant paragraphs of the Agreed Statement of Facts.

9. Thereafter, at the Chair's request, the hearing recessed while the panel reviewed the documents. When the hearing reconvened, Mr. Froese was called as a witness. Ms. Hersak reviewed his qualifications and professional experience and asked the panel to accept Mr. Froese both as the investigator for the Professional Conduct Committee and as an expert qualified to give opinion evidence with respect to compliance audits under the *Municipal Elections Act, 1996 (MEA)*.

10. The panel questioned Mr. Froese, and then it ruled it would accept Mr. Froese as an expert qualified to give opinion evidence with respect to compliance audits carried out pursuant to the *MEA*.

11. Thereafter, Mr. Froese reviewed a number of the provisions of the *MEA*, starting at section 66. He also testified that following the court proceedings arising from the Hamilton municipal election in 2003, the standard for compliance audits had been clarified. He referred particularly to the letter of Mr. Wilkin included in the Brief of Authorities. Mr. Froese opined that the member had not met the standard required of an auditor conducting a compliance audit under the *MEA*.

12. When Mr. Froese was excused as a witness, Ms. Hersak closed the case for the Professional Conduct Committee. Mr. Horn said that he did not intend to comment or call evidence.

13. Ms. Hersak made submissions on behalf of the Professional Conduct Committee with respect to the charge. She submitted that the evidence was clear, cogent and compelling and that the Agreed Statement of Facts made it clear Mr. Horn was guilty of the charge.

DECISION

14. After hearing the submissions, the panel deliberated. When the hearing resumed, the Chair read the following decision of the panel:

THAT, having heard the plea of guilty to the charge, and having seen, heard and considered the evidence, the Discipline Committee finds Mr. James Edward Horn guilty of the charge.

REASONS FOR THE DECISION

15. The 2006 municipal elections in Ontario were the third set of elections held under the *MEA* which was amended in 1996. The *MEA* provides that electors, who think that a candidate has failed to comply with the act, may apply to a municipal council for a compliance audit. The municipal council decides whether or not there will be such an audit.

16. Following the 2006 municipal election in Clarington, some electors whose candidate was subject to a compliance audit, applied to the municipal council for a compliance audit of their candidate's opponent (Exhibit 5, Tab 1). The application to the council asserted a number of breaches of the *MEA* and gave particulars of those breaches. Mr. Horn was appointed by the municipal council to conduct the compliance audit.

17. On the evidence heard by the panel, prior to 2003 it was commonly accepted that a compliance audit consisted primarily of enquires of the candidate. Initially, the panel was concerned that Mr. Horn might have been charged for failing to perform his professional services with due care when he had in fact complied with the accepted standard of practice at the time of the audit. Ultimately, the panel concluded that the standard of the compliance audit had been clarified by the court proceedings in Hamilton after the 2003 municipal elections and that it was clear prior to 2006 that an enquiry-based approach was not sufficient.

18. In the Agreed Statement of Facts, Mr. Horn explicitly acknowledges that the allegations set out in the particulars of the charge were true and that in carrying out the audit, in the four respects asserted in the charge, he did not meet the standard required of a licensed public accountant when conducting a compliance audit under the *MEA*.

19. The panel also concluded that the allegations and particulars set out in the application for the compliance audit raised issues which Mr. Horn knew, or should have known, required additional audit procedures even if an enquiry-based approach was normally acceptable. The panel concluded that Mr. Horn failed to perform his professional services with due care and found him guilty of the charge.

SUBMISSIONS ON SANCTION

20. Ms. Hersak outlined the terms of the order sought by the Professional Conduct Committee namely: a reprimand, a fine of \$2,500; notice disclosing Mr. Horn's name to be given to all members of the Institute, the Public Accountants Council for the Province of Ontario, to the Provincial Institutes/Ordre and to be made available to the public. Ms. Hersak also asked that

Mr. Horn be required to indemnify the Institute for the costs of the investigation, prosecution and hearing to the extent of \$5,000.

21. Ms. Hersak filed a Costs Outline (Exhibit 7) which showed that the total costs of the investigation, prosecution and hearing exceeded \$27,000.

22. Ms. Hersak acknowledged that there were no other cases where a member had been found guilty of failing to perform professional services with due care contrary to Rule 202 when conducting a compliance audit under the *MEA*. She submitted that the cases of *Lui* (1991), *Reiterowski* (2002), *Starr* (2001), and *Vroom* (2003), were analogous and supported the terms of the order requested by the Professional Conduct Committee.

23. Mr. Horn's only comment with respect to sanction was that he intended to fully comply with the order made by the Discipline Committee.

ORDER

24. After deliberation the panel made the following order:

IT IS ORDERED in respect of the charge:

1. THAT Mr. Horn be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Horn be and he is hereby fined the sum of \$2,500 to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Horn'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 the Public Accountants Council for the Province of Ontario; and
 - (c) to all provincial institutes/Ordre;and shall be made available to the public.
4. THAT in the event Mr. Horn fails to comply with any of the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute and his public accounting licence shall thereupon be suspended until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three month period, he shall thereupon be expelled from membership in the Institute and his public accounting licence shall thereupon be revoked, and notice of his expulsion and licence suspension and revocation, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Horn's practice and/or residence. All costs associated with the publication shall be borne by Mr. Horn and shall be in addition to any other costs ordered by the committee.

AND IT IS FURTHER ORDERED:

5. That Mr. Horn be and he is hereby charged costs fixed at \$5,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.

REASONS FOR THE ORDER

25. The panel concluded that the order sought by the Professional Conduct Committee, which was not opposed by Mr. Horn, was appropriate.

Reprimand

26. Mr. Horn is to be reprimanded in writing by the Chair to emphasize to him that his conduct was unacceptable.

Fine

27. A fine of \$2,500 is required as a specific and general deterrent. Mr. Horn should be allowed three months in which to pay the fine.

Notice

28. The publication of a notice of the misconduct and the sanction imposed, which discloses the name of the member, is often the most significant sanction that can be imposed for the purposes of specific and general deterrence. It is in this case. Such notice also informs the public that the chartered accounting profession takes its responsibility as a self-governing profession seriously.

29. It has been held that it is only in the most rare and unusual circumstances that the name of the member should be withheld from the notice. As members value their reputations, the effectiveness of the notice lies in the fact that members know, should they misconduct themselves, any finding of their misconduct and the sanction imposed will be made known to the profession and made available to the public. In this case, there were no rare and unusual circumstances that outweigh the need for publication of the notice disclosing the member's name.

Failure to comply with the terms of the order

30. Orders of the Discipline Committee which impose an obligation on a member, such as the payment of a fine and cost would be meaningless if there were no consequences for the failure to comply with the terms of the order. Accordingly, the order in this case, as is usual, provides a suspension for failure to comply with the terms of the order, and if the failure to comply continues that the member shall be expelled.

31. In the event of the suspension of a member, the member's licence to practise public accounting is also suspended. Accordingly, the fact of the suspension of the member and of the member's licence should be made available to the public. In the event of expulsion from the Institute, with the consequent revocation of the member's licence to practise public accounting,

notice is to be given in a newspaper published in the location where the member practised or resides. The costs of such publication shall be borne by the member.

Costs

32. An order for costs is made to indemnify the Institute, in whole or in part, for the costs of an investigation, prosecution and hearing which results from the member's misconduct. In this case, the Costs Outline filed by the Professional Conduct Committee discloses that the actual costs exceeded \$27,000. As the Professional Conduct Committee sought an order for only \$5,000, it was not necessary for the panel to consider whether the costs set out in the Costs Outline were reasonable.

33. Mr. Horn, whose conduct was largely responsible for the costs of the investigation, prosecution and hearing, should indemnify the Institute for those costs to the extent of \$5,000. Mr. Horn should have three months in which to pay the costs.

DATED AT TORONTO THIS 29th DAY OF MAY, 2009.
BY ORDER OF THE DISCIPLINE COMMITTEE

M.B. MARTENFELD, FCA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.H. CARRINGTON (PUBLIC REPRESENTATIVE)
G. KROFCHICK, CA
S.R. LOWE, CA
R.A. WORMALD, FCA