

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: A charge against **KATHRYN ALISON CROUCHER, CA**, a member of the Institute, under **Rule 203.2(b)** of the Rules of Professional Conduct, as amended.

TO: Ms. Kathryn A. Croucher, CA
138 Werstine Terrace
CAMBRIDGE, ON N3C 4H1

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order made June 17, 2008)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on June 17, 2008 to hear a charge of professional misconduct laid by the Professional Conduct against Ms. Kathryn Alison Croucher, CA, a member of the Institute.
2. Alexandra Hersak appeared as counsel for the Professional Conduct Committee. She was accompanied by investigator appointed by the Professional Conduct Committee, Tatiana Rabinovitch, CA, the Associate Director of Standards Enforcement and Carlo Rossi, a law student.
3. Ms. Croucher was present, and was not represented by counsel. She confirmed for the record that she understood that she was entitled to be represented by counsel and was waiving that right.
4. The decision of the panel was made know at the conclusion of the hearing on June 17, 2008. The written Decision and Order, was sent to the parties on June 27, 2008. These reasons, given pursuant to Bylaw 574, contains the charge, the decision, the order, and the reasons of the panel of the Discipline Committee.

Charge

5. The following charge (Exhibit 3) was laid against Ms. Croucher by the Professional Conduct Committee on February 12, 2008:

THAT the said Kathryn A. Croucher, in or about the period July 16, 2007 to February 8, 2008, 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

6. Ms. Croucher was asked to enter a plea to the charge. Ms. Croucher entered a plea of guilty to the charge and confirmed that she understood that on the basis of her plea, and on that basis alone, she could be found guilty of professional misconduct.

EVIDENCE

7. Ms. Hersak called Ms. Rabinovitch, as her first and only witness. Ms. Rabinovitch gave evidence with reference to a Document Brief (Exhibit 4) which set out the relevant correspondence, including the correspondence between herself and Ms. Croucher.

Relevant facts

8. Ms. Rabinovitch received a complaint from a former client of Ms. Croucher on March 9, 2007. On March 14, 2007, Ms. Rabinovitch sent a letter to Ms. Croucher at her address of record with the Institute advising her about the complaint, enclosing a copy of the complaint and inviting her to provide any comments or information that she wished to have considered by the Professional Conduct Committee.

9. There was some confusion as to the address where Ms. Croucher was residing, however, Ms. Rabinovitch did receive a letter from Ms. Croucher dated April 27, 2007, which responded in part to the complaint.

10. On July 9, 2007, Ms. Rabinovitch sent an email to Ms. Croucher asking for specific information for the sub-committee of the Professional Conduct Committee which would consider the complaint. Ms. Croucher responded to this email on July 12, 2007. However, she did not respond to a follow-up email from Ms. Rabinovitch of July 13, 2007, nor did she send the documents which she said she would send in her email of July 12, 2007.

11. As a result of Ms. Croucher's failure to respond and provide the information, a charge was laid against her by the Professional Conduct Committee under Rules 104 and 203.2 on September 8, 2007.

12. Ms. Croucher attended on the assignment hearing on November 26, 2007, and provided the Secretary of the Discipline Committee with her mailing address and her phone numbers, both at home and at work. Thereafter, the Professional Conduct Committee withdrew the charge.

13. On December 6, 2007, after the charge laid on September 8, 2007, was withdrawn, Ms. Rabinovitch sent a letter to Ms. Croucher. This letter requested the same information as had been requested by the email of July 9, 2007. This letter was sent to the address Ms. Croucher had provided to the Secretary of the Discipline Committee at the assignment hearing.

14. Ms. Croucher did not reply to the letter of December 6, 2007, and the Professional Conduct Committee laid the charge which is the subject of these proceedings.

15. Ms. Croucher did not reply to the letter of December 6, 2007, or provide the requested information until the morning of the hearing, June 17, 2008. All the information requested by the letter of December 6, 2007, was provided by Ms. Croucher at that time, except for the invoices issued to the client for the corporate tax returns for the years 1995 to 1999 inclusive.

16. Ms. Croucher did provide Ms. Rabinovitch with copies of her general ledger for the years 1999 and 2000. The general ledgers had entries which are consistent with invoices having been sent to the client.

DECISION

17. Upon deliberation the panel concluded the relevant facts were as set out above, that the allegation made in the charge had been proven and that Ms. Croucher was guilty of professional misconduct, and made the following decision:

THAT, having seen, heard and considered the evidence, and having heard the plea of guilty to the charge, the Discipline Committee finds Ms. Kathryn Alison Croucher guilty of the charge.

SANCTION

18. Ms. Hersak filed the decision of the Discipline Committee in the matter of Kathryn Alison Gray (now Kathryn Alison Croucher), a decision made on November 1, 2000.

19. Ms. Croucher testified that she had closed her public accounting practice in September 2006, that she had been unemployed since March 2008, and that she would not be working again for at least a month and perhaps two months.

20. Ms. Hersak made submissions and outlined the order requested by the Professional Conduct Committee which included: a reprimand; a fine in the amount \$3,500; costs in the amount of \$3,000; an order that Ms. Croucher cooperate with the Professional Conduct Committee and provide the outstanding information within 10 days, failing which she would be expelled from membership in the Institute. Ms. Hersak also asked for publicity in the ordinary course, including the publication of a notice that Ms. Croucher had been expelled, if in fact she were to be expelled pursuant to the terms of the order.

21. Ms. Hersak acknowledged that all of the information requested in the letter of December 6, 2007, had been received, except for the invoices for the corporate tax returns for the years 1995 to 1999 inclusive. Accordingly, the information sought was the production of those invoices if they were available.

22. Ms. Hersak submitted that the misconduct in this case was egregious, in part because of the prior conviction of professional misconduct. Ms. Hersak submitted that it was necessary for Ms. Croucher to demonstrate that she was governable if she was to remain a member of the Institute.

23. She further submitted that the aggravating factors in this case included: the prior finding of professional misconduct; that in July 2007 Ms. Croucher had to have known that this was a serious matter; that she responded in part to Standards Enforcement and said that more information would be sent, but she never sent it; that Ms. Croucher attended at the assignment hearing of November 26, 2007, and that thereafter, when the charge had been withdrawn, she failed to respond to the letter of December 6, 2007, until the morning of the hearing on June 17, 2008.

24. Ms. Hersak acknowledged, by way of mitigation, that Ms. Croucher had provided most of the requested information on the morning of the hearing.

25. In support of the requested order of \$3,000 for costs, Ms. Hersak presented a bill of costs (Exhibit 8) for \$6,089. She submitted that the rationale for an order partially indemnifying the Institute for the costs of these proceedings – that it was appropriate that the member responsible for the hearing rather than the membership as a whole pay a portion of the cost of the hearing – was particularly applicable given the fact that the conduct required of Ms. Croucher was not onerous.

26. Ms. Hersak asked that in the event of expulsion for failing to cooperate, notice of Ms. Croucher's expulsion be placed in a newspaper published in Oakville where Ms. Croucher had practised and in Streetsville where she now resides.

27. Ms. Hersak submitted that the requested order was consistent with sanctions imposed in prior cases and in particular referred the panel to the cases of *Byers*, *Chu*, *Desing* (1999), *Greer* and *Perris*.

28. Ms. Croucher, in brief submissions, pointed out that she was unemployed and needed time to pay if a fine or costs were imposed. She also said that she took no issue with respect to the quantum of the requested fine and costs.

ORDER

After deliberating, the panel made the following order:

IT IS ORDERED in respect of the charge:

1. THAT Ms. Croucher be reprimanded in writing by the chair of the hearing.
2. THAT Ms. Croucher be and she is hereby fined the sum of \$3,500 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Ms. Croucher be and she is hereby charged costs fixed at \$3,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Ms. Croucher co-operate with the Professional Conduct Committee.
5. THAT Ms. Croucher provide to the Professional Conduct Committee, within ten (10) days from the date this decision and order becomes final under the bylaws, the invoices for the corporate tax returns specified in the letter of December 6, 2007 from Tatiana Rabinovitch to Ms. Croucher for the years 1995 to 1999 inclusive and, if they are not available, such information as the member has available, such as the member's General Ledger for those years.

6. THAT notice of this Decision and Order, disclosing Ms. Croucher'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; and
 - (b) to all provincial institutes/Ordre, and shall be made available to the public.
7. THAT in the event Ms. Croucher fails to comply with the requirements of paragraphs 2, 3 or 5 of the Order, she shall thereupon be expelled from membership in the Institute, and notice of her expulsion, disclosing her name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Ms. Croucher's former practice and residence. All costs associated with the publication shall be borne by Ms. Croucher and shall be in addition to any other costs ordered by the committee.

REASONS FOR THE ORDER

29. The panel agreed with Ms. Hersak that Ms. Croucher should be given one last opportunity to demonstrate that she is willing and able to comply with the requirements of the Institute. If she is unable to do, so she should forthwith be expelled. Accordingly, the panel concluded that it was appropriate to require Ms. Croucher to provide the information which she has to the Professional Conduct Committee within 10 days of the order becoming final, failing which she would be expelled.

30. The panel recognized that Ms. Croucher acknowledged that she had failed to cooperate as required, that she had entered a plea of guilty, that she took no issue with the requested amount of the fine and costs and that she had made a reasonable request for time to pay the fine and costs which she anticipated would be imposed.

Reprimand

31. A reprimand was ordered to emphasize to Ms. Croucher that her conduct was unacceptable.

Fine

32. A fine of \$3,500 was ordered as a specific deterrent to Ms. Croucher and as a general deterrent to other members who might be inclined not to cooperate as required with the Professional Conduct Committee. In the circumstances, it is appropriate to allow Ms. Croucher 12 months to pay the fine.

Costs

33. The costs requested by Ms. Hersak constitute a partial indemnity for the costs of these proceedings. Ms. Croucher's misconduct is the sole reason for the proceedings, and it would have been relatively easy for her to comply with the request of the Professional Conduct Committee. Accordingly, it is particularly appropriate that she, not the membership as a whole, bear a portion of these costs.

Notice

34. Publishing the names of members found guilty of professional misconduct is often the single most significant sanction that may be imposed for general deterrence, education of the membership at large, and protection of the public. It is only in the most exceptional circumstances that such important principles will be outweighed by privacy considerations. No such unusual circumstances were urged on the panel in this case and accordingly, the panel ordered the usual notice to be published to all members of the Institute, provincial institutes/Ordre and that it should be made available to the public.

Failure to comply

35. The panel was persuaded that Ms. Croucher should demonstrate that she is governable, failing which she should be expelled from membership in the Institute. If Ms. Croucher is unwilling or unable to comply with the requirements of the order, she shall be expelled from membership. In the event Ms. Croucher is expelled, notice of the expulsion, at her expense, is to be published in newspapers distributed in the geographic area of Ms. Croucher's former practice and current residence.

DATED AT TORONTO THIS 9TH DAY OF OCTOBER 2008
BY ORDER OF THE DISCIPLINE COMMITTEE.

J.A. CULLEMORE, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

S.J. HOLTOM, CA
P. MCBURNEY (PUBLIC REPRESENTATIVE)