

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Allegations against **KENNETH MICHAEL HUBBARD, CA**, a member of the Institute, under **Rules 104.1 and 104.2(a)** of the Rules of Professional Conduct, as amended.

**TO:** Mr. Kenneth M. Hubbard, CA

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

**REASONS**

**(Decision and Order made January 26, 2012)**

1. This tribunal of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on January 26, 2012 to hear allegations of professional misconduct brought by the Professional Conduct Committee (PCC) against Kenneth Michael Hubbard, a member of the Institute.
2. Ms. Alexandra Hersak appeared on behalf of the PCC. Mr. Hubbard was not represented by counsel and did not attend. Mr. Robert Peck attended the hearing as counsel to the Discipline Committee.
3. Ms. Hersak filed the Affidavit of Service of the Allegations (Exhibit 1) and the Notice of Hearing (Exhibit 2), stating that both had been personally served on Mr. Hubbard, who identified himself to the process server. Ms. Hersak also filed a letter from Mr. Hubbard which stated he had no defense to the allegations and would plead guilty (Exhibit 3) and the acknowledgement of receipt of Notice of Hearing signed by Mr. Hubbard (Exhibit 4). The tribunal was satisfied that Mr. Hubbard had received notice of the hearing and that it would be appropriate to proceed in his absence.
4. The decision of the tribunal was made known at the conclusion of the hearing on January 26, 2012, and the written Decision and Order sent to the parties on January 27, 2012. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, contain the allegations, the decision, the order, and the reasons of the tribunal for its decision and order.

**Allegations**

5. The following allegations were laid against Mr. Hubbard by the PCC on October 13, 2011:
  1. THAT the said Kenneth M. Hubbard, in or about the period March 5, 2010 to September 7, 2011, failed to co-operate with the regulatory process of the Institute contrary to Rule 104.1 of the Rules of Professional Conduct, in that he failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct a practice inspection.
  2. THAT the said Kenneth M. Hubbard, in or about the period August 26, 2010 to September 7, 2011, failed to co-operate with the regulatory process of the Institute contrary to Rule 104.2(a) of the Rules of Professional Conduct, in that he failed to promptly reply in writing to a letter from the Institute to which a written reply is specifically required, in that he failed to reply to letters dated August 12, 2010, March 7, 2011, and May 27, 2011 from Ms. Theresa Tonelli, CA, Director of Standards Enforcement at the Institute.

### **Plea**

6. As Mr. Hubbard was not present, the Chair entered a plea of not guilty to each of the allegations on his behalf.

### **The proceedings**

7. Ms. Hersak made an opening statement. She advised the tribunal that the case for the PCC would be presented by way of a Document Brief. She then filed the Document Brief (Exhibit 5) which contained the Affidavit of Grant Dickson, FCA, Director of Practice Inspection, and the Affidavit of Theresa Tonelli, CA, Director of Standards Enforcement.

8. In presenting the case for the PCC, Ms. Hersak made reference to the relevant documents in the Document Brief. No other evidence was called on behalf of the PCC.

9. Ms. Hersak submitted that the evidence was clear, cogent and convincing that Mr. Hubbard had failed to comply with the regulatory processes of the Institute and should be found guilty.

### **The Facts**

10. Mr. Hubbard, a sole practitioner, was advised by letter dated January 29, 2010, that his practice had been selected for a practice inspection. He was asked to complete the appropriate forms not later than March 5, 2010. He did not do so. He was then advised by registered letter that he was required to complete and return his practice inspection forms on or before March 31, 2010. He was also told that if he failed to do so the matter would be referred to the PCC. Mr. Hubbard did not submit his forms and the matter was referred to the PCC.

11. The Director of Standards Enforcement, Ms. Tonelli, CA, wrote to Mr. Hubbard on August 12, 2010 advising him of a complaint and asking him to respond to the complaint on or before August 26, 2010. Mr. Hubbard did not do so. Ms. Tonelli wrote to Mr. Hubbard again on March 7, 2011, asking for a reply by March 22, 2011 and advising him that his failure to reply could result in a charge by the PCC. In the absence of a response, Ms. Tonelli wrote to Mr. Hubbard again on May 27, 2011 reminding him that failure to respond by June 10, 2011 could result in a charge or charges under the Rules. Mr. Hubbard did not respond to Ms. Tonelli's letters.

### **Decision**

12. After deliberating, the tribunal made the following decision:

THAT, having determined to proceed with the hearing in the absence of Mr. Hubbard, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to Allegation Nos. 1 and 2, and having seen and considered the evidence, the Discipline Committee finds Kenneth Michael Hubbard guilty of the allegations.

### **Reasons for Decision**

13. The evidence contained in the Document Brief clearly proved that Mr. Hubbard did not respond to the Practice Inspection request for information nor to the Standards Enforcement request for a response to the complaint. The evidence included an affidavit of Grant Dickson, FCA (Director of Practice Inspection) and of Theresa M. Tonelli, CA (Director of Standards Enforcement). Additional evidence was provided in Exhibit 3, a November 24, 2011 letter from Mr. Hubbard in which he acknowledged he neither responded to the request of Practice Inspection for information nor to Standards Enforcement during their investigation of the matter. Mr. Hubbard did not cooperate with Practice Inspection and his failure to do so constituted a violation of Rule 104.1. Furthermore, Mr. Hubbard did not respond to Standards Enforcement and his failure to do so constituted a violation of Rule 104.2 (a).

14. Mr. Hubbard's failure to cooperate with Practice Inspection means that his practice, which should have been inspected in 2010, remained uninspected for all of 2010 and all of 2011. The Practice Inspection program is an important regulatory activity of the Institute, Mr. Hubbard's governing body. Mr. Hubbard's failure to cooperate over a period of two years is clearly professional misconduct. Standards Enforcement is also an essential function of our Institute required to protect the public and Mr. Hubbard's failure to respond, again over a protracted period, is clearly professional misconduct. Accordingly, Mr. Hubbard was found guilty of both allegations.

#### **Sanction**

15. The PCC did not call evidence with respect to sanction.

#### **Submissions with respect to sanction**

16. Ms. Hersak, on behalf of the PCC, submitted that an appropriate sanction would be: a written reprimand; a fine of \$3,500; an order that Mr. Hubbard cooperate with Practice Inspection within 15 days and, in the event he fails to do so, that he should be suspended for a period of time, and if he still does not cooperate, that his membership be revoked; and the usual order with respect to publication. The PCC also sought an order for costs of the investigation and hearing in the amount of \$3,000.

17. Ms. Hersak submitted that Mr. Hubbard's failure to cooperate with Practice Inspection and failure to respond to Standards Enforcement, resulting in an investigation and hearing, were aggravating factors. Time and resources have been spent on this matter which only required a few hours of Mr. Hubbard's time to complete and submit the forms.

18. In Mr. Hubbard's letter (Exhibit 3) he indicated that the original request had been received during tax season and he had set it aside to be dealt with later. Ms. Hersak stated that the initial letter from Practice Inspection was sent out at the end of January, not during the heart of tax season. Ms. Hersak submitted Mr. Hubbard's explanation that he forgot about the matter is not tenable as he was sent numerous follow-up letters, including those from Standards Enforcement. Mr. Hubbard indicated that he had problems in the past accessing the web site. Ms. Hersak stated that despite being provided with the name of a contact person, Mr. Hubbard had made no attempt to contact anyone at the Institute for assistance.

19. Ms. Hersak submitted that Mr. Hubbard has not dealt with his obligations. He has not filled out the forms nor has he attended the hearing. Practice Inspection is an important process for all members in public practice and provides protection to the public.

20. Ms. Hersak acknowledged in mitigation that Mr. Hubbard had no previous involvement with the discipline process. His letter indicated he has no defense and pleads guilty although at the date of the hearing he had still not provided the requested forms.

21. Ms. Hersak submitted that the reprimand, the fine and publicity were required to both specifically deter Mr. Hubbard from failing to cooperate in the future and as a general deterrent to dissuade other members from similar misconduct.

22. Ms. Hersak submitted that a term in the Order requiring Mr. Hubbard to cooperate would provide him with the opportunity to show that he was both willing and able to comply with the regulatory requirements of the Institute, and allow his practice to be inspected.

23. Ms. Hersak filed a Costs Outline (Exhibit 6) which showed that the costs of the investigation and hearing were approximately \$6,400. The PCC was seeking costs on a partial indemnity basis in

the amount of \$3,000. Ms. Hersak said the PCC would not object to allowing a reasonable period of time to pay the fine and costs.

24. Ms. Hersak distributed a Case Brief containing five ICAO Discipline Committee cases involving failure to cooperate: *Collaton*, *Kloosterman*, *Di Tomaso*, *Metzloff* and *Percival*. She pointed out that these cases resulted in orders similar to the order sought in this case by the PCC.

#### **Order**

25. After deliberating, the tribunal made the following order:

IT IS ORDERED in respect of the allegations:

1. THAT Mr. Hubbard be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Hubbard be and he is hereby fined the sum of \$3,500 to be remitted to the Institute within three (3) months from the date this Decision and Order is made.
3. THAT Mr. Hubbard co-operate by submitting the forms referred to in the letter from Practice Inspection dated January 29, 2010 within twenty (20) days of the date this Decision and Order is made.
4. THAT notice of this Decision and Order, disclosing Mr. Hubbard's name, be given after this Decision and Order is made:
  - (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.

IT IS FURTHER ORDERED:

5. THAT Mr. Hubbard be and he is hereby charged costs fixed at \$3,000 to be remitted to the Institute within three (3) months from the date this Decision and Order is made.

AND IT IS FURTHER ORDERED

6. THAT in the event Mr. Hubbard fails to comply with any of the requirements of this Order, he shall be suspended from the rights and privileges of membership in the Institute and his public accounting licence shall be suspended until such time as he does comply, provided that he complies within thirty (30) days from the date of his suspension, and in the event he does not comply within the thirty (30) day period, his membership in the Institute and his public accounting licence shall be revoked, and notice of his membership 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. Hubbard's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Hubbard and shall be in addition to any other costs ordered by the tribunal.

#### **Reasons for Sanction**

26. The tribunal concluded that the order sought by the PCC, for the reasons advanced by Ms. Hersak, was appropriate. The tribunal made a minor deviation to part 3 of the order, changing 15

days to 20 days, to reflect the fact that Mr. Hubbard may not receive notification of the order for a few days as he was not in attendance at the hearing.

27. The tribunal concluded that the reprimand, the fine and the notice satisfied the principle of specific deterrence.

28. The tribunal concluded that the fine and notice satisfied the principle of general deterrence. The tribunal thought that the notice was particularly important in this case as publicity is the term of the order which would be the most effective general deterrent.

29. The principle of rehabilitation was addressed by the requirement that Mr. Hubbard cooperate within 20 days, failing which he would be suspended and if the suspension continued for 30 days, his membership would be revoked. It is a privilege to be a chartered accountant and there are responsibilities which go with that privilege. One of the obligations is cooperation with the regulatory programs of the Institute. If members are unwilling or unable to comply with the regulatory requirements, they will not retain the privilege of membership.

30. Should Mr. Hubbard not provide Practice Inspection with the information requested by them, the profession cannot bear the risk of him remaining a member nor is it in the public interest for someone who does not meet the regulatory requirements of the profession to enjoy the designation. The choice of whether Mr. Hubbard continues to practise within the discipline of the profession, or is removed from it, is his.

31. Mr. Hubbard did not attend the hearing. In his letter of November 24, 2011, he almost cavalierly admits his guilt but does not offer to rectify his failure to cooperate with Practice Inspection nor does he make any commitment to cooperate in future. He has still not sent in the required forms. Thus the tribunal is left with a degree of doubt about Mr. Hubbard's attitude and willingness to be governed. The tribunal fervently hopes that this doubt is misplaced and that Mr. Hubbard will take this opportunity to cooperate fully with Practice Inspection.

#### **Costs**

32. Mr. Hubbard's professional misconduct was the reason for the proceedings. He should indemnify, in part, the Institute for the expense of the proceedings. The costs requested by PCC were approximately half of the actual cost of the proceedings. The tribunal concluded that Mr. Hubbard should pay a partial indemnity of \$3,000 and, as with the fine, that he should be given three months, from the time the Decision and Order became final, to pay the costs.

DATED AT TORONTO THIS 3<sup>RD</sup> DAY OF APRIL, 2012  
BY ORDER OF THE DISCIPLINE COMMITTEE



R.J. ADAMKOWSKI, CA – DEPUTY CHAIR  
DISCIPLINE COMMITTEE

#### MEMBERS OF THE TRIBUNAL:

J.B. BARRACLOUGH, FCA  
G. HINTON (PUBLIC REPRESENTATIVE)  
W.K. McDOUGALL, CA