

Michael Stephen Brosko: Summary, as Published in *CheckMark*

Michael Stephen Brosko, of Oshawa, was found guilty of two charges under Rule 104 of failing to promptly reply in writing to correspondence from the Institute in respect of matters of professional conduct. The charges arose out of Mr. Brosko's failure to respond to standards enforcement enquiries in respect of complaints received from members of the public. He was fined \$1,000 and ordered to respond to standards enforcement within a specified time, failing which he would be expelled from the Institute. Mr. Brosko complied with the order.

CHARGE(S) LAID re Michael Stephen Brosko

The Professional Conduct Committee hereby makes the following charges against Michael Stephen Brosko, CA, a member of the Institute:

1. THAT, the said Michael S. Brosko, in or about the period March 10, 1999 to June 15, 1999, failed to promptly reply in writing to a letter from the Institute in respect of matters of professional conduct signed by the associate director of standards enforcement and dated and sent March 10, 1999, in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.
2. THAT the said Michael S. Brosko, in or about the period March 18, 1999 to June 15, 1999, 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 18, 1999, in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

Dated at Toronto this 15th day of June, 1999.

E.M. REITEROWSKI, CA
DEPUTY CHAIR – PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Michael Stephen Brosko

DECISION AND ORDER IN THE MATTER OF: Charges against **MICHAEL STEPHEN BROSKO**, a suspended member of the Institute, under **Rule 104**, of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE JANUARY 19, 2000

DECISION

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Michael Stephen Brosko guilty of charges Nos. 1 and 2.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Brosko be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Brosko be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within eighteen (18) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Brosko respond to the letters from the associate director of standards enforcement dated March 10 and March 18, 1999, on or before January 31, 2000.
4. THAT notice of this Decision and Order, disclosing Mr. Brosko's name, be given after this Decision and Order becomes final under the bylaws:
 - to the Public Accountants Council for the Province of Ontario;
 - to the Canadian Institute of Chartered Accountants; and
 - by publication in *CheckMark*.
5. THAT in the event Mr. Brosko fails to comply with any requirement of this Order within the time period 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 above, and by publication in a newspaper distributed in the geographic area of Mr. Brosko's then current or former practice, employment and/or residence.

DATED AT TORONTO THIS 20TH DAY OF JANUARY 2000
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Michael Stephen Brosko

REASONS FOR DECISION AND ORDER IN THE MATTER OF: Charges against **MICHAEL STEPHEN BROSKO**, a suspended member of the Institute, under **Rule 104**, of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE JANUARY 19, 2000

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on January 19, 2000 to hear evidence concerning two charges brought by the professional conduct committee against Mr. Michael S. Brosko.

The professional conduct committee was represented by Ms. Deborah McPhadden. Mr. Brosko was present at the hearing but was not represented by counsel. He acknowledged that he was made aware of his right to be represented by counsel and that he understood that right.

The hearing concluded on January 19, and the panel's decision and order was issued on January 20, 2000. These reasons, issued in writing pursuant to Bylaw 574, contain the panel's decision and order, and the charges laid by the professional conduct committee, as well as the reasons of the panel.

DECISION ON THE CHARGES

Two charges had been laid against Mr. Brosko pursuant to Rule 104 of the rules of professional conduct. Both charges related to the failure of Mr. Brosko to reply to letters from the Institute.

The charges read as follows:

1. THAT, the said Michael S. Brosko, in or about the period March 10, 1999 to June 15, 1999, failed to promptly reply in writing to a letter from the Institute in respect of matters of professional conduct signed by the associate director of standards enforcement and dated and sent March 10, 1999, in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.
2. THAT the said Michael S. Brosko, in or about the period March 18, 1999 to June 15, 1999, 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 18, 1999, in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

In presenting her case, counsel for the professional conduct committee called Ms. Elizabeth Hare, an associate director of standards enforcement, as a witness, and filed as an exhibit a document brief containing, among other things, copies of various correspondence from the associate director of standards enforcement to Mr. Brosko, together with copies of Canada Post's certificates of delivery. No replies have been received by the standards enforcement area from Mr. Brosko to Ms. Hare's two registered letters dated March 10 and March 18, 1999. The document brief also contains copies of the various complaint letters which prompted the sending of the letters to Mr. Brosko referred to in the charges.

As Mr. Brosko acknowledged he received the letters, and did not reply to them, it is relatively easy to set out the facts relevant to the charges.

With respect to charge No. 1, the document brief attested, and Mr. Brosko did not dispute, that:

- On February 4, 1999, the associate director of standards enforcement wrote to Mr. Brosko about a complaint brought by Mr. Sylvano Carlesso, and requested a reply on or before February 24, 1999.
- On February 23, 1999, the associate director of standards enforcement wrote to Mr. Brosko about a complaint brought by Mr. Brian Jones, CA, and requested a reply on or before March 5, 1999.

Mr. Brosko did not reply to either letter.

- On March 10, 1999, the associate director of standards enforcement sent Mr. Brosko, by registered mail, a letter specifically requiring his written response, on or before March 30, 1999, to the previous letters of February 4 and 23, 1999. The letter advised him that his failure to respond would be referred to the professional conduct committee and could result in a charge or charges.

To date Mr. Brosko has not replied to any of these letters.

With respect to charge No. 2, the document brief attested, and Mr. Brosko did not dispute, that:

- On March 18, 1999, the associate director of standards enforcement informed Mr. Brosko by registered mail of a complaint received from Dr. Clifford C. Geddes, and requested a reply from him on or before March 31, 1999.

To date Mr. Brosko has not responded to this letter.

When giving evidence, Mr. Brosko explained that, since December 1996, he has suffered ill health, undergone a number of operations, and been hospitalized various times, including a stay in the Timmins mental health unit in January 1998.

As a result of his ill health, and resulting inability to attend to his accounting practice, in July 1998 his landlord locked him out of his office, and the National Bank seized his home in Timmins. He moved to Oshawa with his wife to live with his wife's parents, where he receives social assistance.

From March 15 to April 30, 1999, Mr. Brosko was employed with a chartered accountant in Oshawa. His priority and focus at this time was to raise enough money to engage a trustee in bankruptcy, and thus put an end to what he described as intolerable calls from creditors. On May 25, 1999, Mr. Brosko filed for personal bankruptcy.

In June 1999, while assisting his father move into a nursing home, Mr. Brosko went into a coma following a seizure, and was again hospitalized.

The charges alleging that he did not respond to standards enforcement correspondence between March and June, 1999 were admitted by Mr. Brosko. His explanation was that he had

other priorities, in particular acquiring the money needed to retain a trustee in order to declare bankruptcy. The issue was whether these other priorities constituted a defence to the charges.

It is unusual for the discipline committee to hear evidence about the substance of complaints made to the professional conduct committee when hearing a failure to respond charge under Rule 104. However, Mr. Brosko referred to the complaints, and the panel could only conclude, from the clear and concise points he made relating to them, that it would not have taken him very long to respond to the letters referred to in the charges.

Mr. Brosko also made it clear, through his cross-examination of Ms. Hare, that between February 25, 1998 and February 15, 1999, the professional conduct committee had conducted two previous investigations into allegations of misconduct brought against him, and that those investigations were completed on November 2, 1998 and February 15, 1999, respectively. The panel did not hear, and did not wish to hear, about the substance of those investigations. Seemingly, Mr. Brosko called the evidence to show that he had previously cooperated with standards enforcement. The evidence was clear that he had cooperated in the past, and that he knew how to respond to standards enforcement enquiries.

While Mr. Brosko's health problems and financial plight were truly unfortunate, and would gain the sympathy of any panel of the discipline committee, his own evidence clearly established that he received the Institute letters and did not respond to them. His explanation for this failure to respond during the latter half of March, all April and May, and the first half of June, 1999, was not ill health, but other priorities. He was familiar, and had dealt successfully, with the professional conduct committee process in the past. The length of time it would have taken him to respond, judging from his own evidence, was not such that it would have unduly interfered with the pursuit of his other priorities.

After considering the evidence, and the submissions made by Ms. McPhadden and Mr. Brosko, the panel, upon deliberation, found Mr. Brosko guilty of both charges. The decision read:

DECISION

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Michael Stephen Brosko guilty of charges Nos. 1 and 2.

ORDER AS TO SANCTION

The panel then heard submissions from the parties with respect to sanction, and, upon further deliberation, made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Brosko be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Brosko be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within eighteen (18) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Brosko respond to the letters from the associate director of standards enforcement dated March 10 and March 18, 1999, on or before January 31, 2000.
4. THAT notice of this Decision and Order, disclosing Mr. Brosko's name, be given after this Decision and Order becomes final under the bylaws:

- to the Public Accountants Council for the Province of Ontario;
- to the Canadian Institute of Chartered Accountants; and
- by publication in *CheckMark*.

5. THAT in the event Mr. Brosko fails to comply with any requirement of this Order within the time period 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 above, and by publication in a newspaper distributed in the geographic area of Mr. Brosko's then current or former practice, employment and/or residence.

In considering the appropriate sanction, the panel considered the three general principles of sentencing, namely rehabilitation, general deterrence and specific deterrence. The panel noted that Mr. Brosko was presently a suspended member of the Institute, due to his personal bankruptcy, and that it was his expectation to be discharged from bankruptcy before the end of February 2000.

Rehabilitation was not a major concern of the panel, as the charges did not relate to technical standards. It was also noted that the applications committee would address the issue of Mr. Brosko's technical competence when he applied to have his bankruptcy suspension lifted.

General deterrence and specific deterrence were relevant to the determination of the appropriate sanction in this case. In particular, the panel concluded that the order should specifically deter Mr. Brosko from focusing on other priorities to the exclusion of his professional responsibilities to the Institute.

Reprimand

The panel believes that a reprimand in writing from the chair of the hearing stresses to Mr. Brosko the unacceptability of his conduct as a chartered accountant.

Fine

Ms. McPhadden advised the panel that, in the absence of knowledge as to Mr. Brosko's dire financial situation, the professional conduct committee had instructed her to seek a fine in the range of \$1,500 to \$2,000. She submitted, however, that a fine should not be assessed in an amount that would lead to the inevitable result of expulsion on account of Mr. Brosko's inability to pay. The panel noted that Mr. Brosko is currently receiving social assistance of less than \$500 per month, but concluded that he is still capable of gainful employment, even while his membership is suspended. It was further noted that he will likely be able to apply for membership reinstatement within the year.

The panel concluded that a fine of \$1,000 was appropriate in this case, as both a specific deterrent to Mr. Brosko, and a general deterrent to like-minded members, and as a demonstration to the public of the profession's intolerance of the type of behaviour demonstrated by this member. The panel determined that allowing Mr. Brosko eighteen months from the date of the decision and order becoming final provided adequate time to enable him to pay the fine.

Requirement to Respond

The panel considered that an expeditious reply to standards enforcement was in the best interests of all parties, and accordingly ordered Mr. Brosko to reply to the letters dated March 10 and March 18, 1999 on or before January 31, 2000.

Notice

The giving of notice, including publication, of the decision and order, including Mr. Brosko's name, is, in the opinion of the panel, a general deterrent. Communication of the fact that the profession views breaches of its rules as extremely serious is an important factor in the governance of the profession. Publication demonstrates to both the public and members that the Institute is governing itself in the public interest. The disciplinary process of a self-governing professional body must be viewed by its members and the public as an open process. The panel therefore ordered the normal publication of these proceedings.

Expulsion for Failure to Comply

The order requires Mr. Brosko to comply with its terms within specified times. Failure to comply with any of the order's requirements within the prescribed time periods will result in Mr. Brosko's immediate expulsion from membership in the Institute. Mr. Brosko complied with paragraph 3 of the order, requiring his responses to the standards enforcement letters, by the January 31, 2000 deadline.

DATED AT TORONTO THIS DAY OF MARCH, 2000
BY ORDER OF THE DISCIPLINE COMMITTEE

P.B.A. CLARKSON, CA – DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

L.G. BOURGON, CA
R.I. COWAN, CA
M.A. MANERA, CA
G.R. PEALL, CA
B. RAMSAY (Public representative)